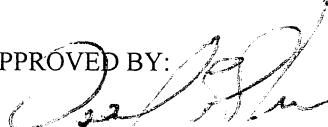


☒ R/W MANUAL CHANGE  
(1993 Edition)

**RWMC- 159**

☐ PROCEDURAL HANDBOOK  
(1984 Edition)

RWPH-\_\_\_\_-\_\_\_\_\_  
TRANSMITTAL#\_\_\_\_

TITLE: ACQUISITION	APPROVED BY:  DONALD E. GREBE	DATE ISSUED: <b>MAY 31 2006</b>
SUBJECT AREA: CHAPTER 8 - ACQUISITION	ISSUING UNIT: OFFICE OF RIGHT OF WAY PROJECT DELIVERY	
SUMMARY OF CHANGES: Revises Sections 8.01.00.00, 8.02.00.00, 8.03.00.00, 8.04.00.00, 8.06.00.00, 8.09.00.00, 8.10.00.00, 8.16.00.00, 8.50.00.00, and 8.69.00.00; revises Form RW 8-16; deletes Exhibit 8-EX-6; and updates Tables of Contents for sections, forms, and exhibits.		

### **PURPOSE**

The purpose of this manual change is to incorporate modifications to eminent domain procedure; to revise Federal reimbursement provisions; and to add, revise, and clarify various sections.

To comply with revisions to the Code of Federal Regulations issued on January 4, 2005, the term "First Written Offer" (FWO) was changed to "Initiation of Negotiations" (ION) throughout this manual change.

The "Certificate of Sufficiency and Hazardous Substances Disclosure Document" in Section 8.16.00.00 has been completely rewritten. With major revisions throughout Section 8.69.00.00, many subsections have been deleted and renumbered.

Formatting update has been applied and general typographical errors have been corrected.

### **PROCEDURES**

- |            |  |
|------------|--|
| 8.01.04.01 | Revised to allow acquisition of noncomplex, low value parcels by mail or fax.  |
| 8.01.07.00 | Includes reference to "single agent" in conjunction with the term "caseworker." Revised to clarify that the caseworker approach is where a single agent performs more than one Right of Way function, i.e., appraisal/acquisition, acquisition/RAP, etc. |
| 8.01.08.00 | Revised to change the name "Determination of Just Compensation" to "Waiver Valuation." Also, language is incorporated to clarify that a Waiver Valuation is not an appraisal and cannot be used for condemnation purposes.                               |
| 8.01.09.00 | Revised to emphasize that agents who perform the single agent/"caseworker" approach for parcels valued at \$10,000, or less, should be aware of relocation issues and fully document parcel files.   |
| 8.01.10.00 | Revised to emphasize the need for offers to be made promptly and that diary entries be made when delays occur.   |
| 8.01.11.00 | Revised to incorporate the Valuation Summary Statement as a potential document to be delivered at the time of the Initiation of Negotiations when Waiver Valuation is utilized.  |

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8.01.17.00	Changed to reflect updated Section reference.
8.01.18.00	Clarifies the process; adds new language; changes the name of “1 <sup>st</sup> level review” to “Condemnation Evaluation Meeting” and “2 <sup>nd</sup> level review” to “Condemnation Panel Review Meeting;” and assigns new responsibilities.
8.01.19.00	Revised to reference correct page number of Exhibit 8-EX-5.
8.01.20.00	Revised to advise agents to check Delegation of Authority matrix.
8.01.27.00	Revised “Determination of Just Compensation” to “Waiver Valuation.”
8.01.28.00, 8.01.29.00, and 8.01.29.01	Revised to clarify the approval authority for substantial administrative settlements.
8.02.00.00	Changed title from “Appraisal Summary Statements” to “Appraisal Summary Statements and Valuation Summary Statements.” Also, revised “Determination of Just Compensation” to “Waiver Valuation” throughout this section.
8.02.01.00	Revised to clarify when an Appraisal Summary Statement is to be used as opposed to a Valuation Summary Statement.
8.02.02.00	Revised to include language regarding the use of the new Valuation Summary Statement, along with the requirement to include a mandatory paragraph entitled “Summary of the Basis for Just Compensation” in both the Appraisal Summary Statement and Valuation Summary Statement. Also, clarifies which modifications are made to the Summary Statement Relating to the Purchase of Real Property or an Interest Therein, depending on whether an Appraisal Summary Statement or Valuation Summary Statement is used.
8.02.03.00, 8.02.04.00, and 8.04.15.11	Changed to include a reference to Valuation Summary Statements.
8.03.08.00	Changed to reflect reference to Section 8.01.29.00 as the result of a previous manual change.
8.04.15.07	Revised and corrected. Lessees will be advised that RAP eligibility may be lost if lessee decides to relocate prior to the Initiation of Negotiations.
8.04.24.00 B.1.	Reflects Tax Lien Date change from March 1 to January 1, per Section 2192 of the Revenue and Taxation Code.
8.04.40.00	Revised standard Contract clause involving properties subject to a “Financing Statement.” Reference to “grantee” has been replaced with “debtor” to be consistent with the terminology used in Exhibits 8-EX-21 and 8-EX-22.
8.06.00.00	Revised title from “Improvements” to “Improvements and Excess.”
8.06.22.00	Revised to note potential eligibility of tenants for RAP benefits and federal participation in damages to excess property.
8.09.01.00 A., C.	Revised to conform to current laws and regulations pertaining to tenants and rented property.
8.10.05.00	Revises and clarifies who is responsible for replacing and/or perpetuating property monuments impacted by a proposed construction project.
8.10.09.00	Revised to transition from Metric to U.S. Customary Units (English).

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8.16.01.02 C.	Revised “Determination of Just Compensation” to “Waiver Valuation.”
8.16.01.03	Revises description of process and includes addition of Hazardous Substances Disclosure Document with Certificate of Sufficiency.
8.50.04.01	Revised to explain that although the cost of purchasing excess land and improvements thereon are eligible for federal participation, the Department will no longer seek federal participation.
8.69.01.00	Revises duties of HQ R/W and requirements for Acquisition and Agreements, etc.
8.69.02.00	Clarifies instruction for compliance with 23 CFR 646.216; identifies HQ R/W as consulting source.
8.69.03.00	Provides minimum qualifications for District Railroad Agent.
8.69.03.01	Revised to provide design cost estimate categories, R/W responsibilities, provision for additional flagging, design and environmental requirements and estimated railroad work, cost estimates for the R/W Data Sheet.
8.69.03.02	Revised to clarify responsibility, types of agreements, Exhibit 8-EX-8 and Railroad Syllabus.
8.69.03.03	Revised to reflect HQ R/W approval authority.
8.69.03.04	Clarifies duties of District Railroad Agent.
8.69.04.00	Adds duties of Headquarters R/W Office of Project Delivery.
Previous 8.69.05.00	Deleted previous 8.69.05.00 heading and some text; included remaining text with 8.69.04.00.
8.69.07.00	Provides the role of the Surface Transportation Board (STB); eliminates reference to Interstate Commerce Commission.
8.69.08.00	Provides powers of the STB.
8.69.10.00	Revised to identify eligible members of Railroad Advisory Team.
8.69.11.00	Describes the elements of the Railroad Project Certification process.
8.69.12.00	Revises Liaison Procedures; eliminates references to Agreements Branch.
8.69.13.00	Revised to include Hazardous Substances Disclosure Document. Describes duties of HQ R/W Office of Project Delivery.
8.69.15.01	Clarifies language.
8.69.15.02	Revises language regarding use of R/W contracts and other instruments.
8.69.16.01	Adds explanation that minimum payment to railroads is in addition to any railroad processing fees.
8.69.16.02	Revises language to specify R/W Agreements.
8.69.16.05	Revised to allow reasonable processing fees.
8.69.17.00	Adds R/W Agreements and Railroad Agreements to acceptable instruments. Adds new clause language.
8.69.18.00	Adds new clause language, clarifies existing clauses. Eliminates obsolete language.
8.69.19.04	Clarifies language and cites Section 8.01.30.00.
8.69.19.05	Adds new instruction regarding standard indentures; eliminates obsolete language.

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Previous 8.69.20.06, 8.69.21.00, and 8.69.21.01	Deleted.
8.69.19.06	Deletes requirement for Exhibit 8-EX-83. Provides for use of license for minor improvements in railroad right of way.
8.69.20.00	Revised to address all railroad drilling permits.
8.69.21.00	Revised to clarify examples for acquiring access rights.
8.69.22.01	Revised to identify HQ R/W Office of Project Delivery in Determination of Use - Replacement.
8.69.24.00	Identifies HQ R/W as recipient of MOS.
8.69.24.02	Adds processing fees to allowable payment in settlements.
Form RW 8-16	Revised to allow Regions/Districts the ability to encumber funds at the time of the First Written Offer, subject to the procedures and criteria outlined in the Department's memorandum, entitled "Encumbering Right of Way Capital Funds at the First Written Offer a.k.a. Initiation of Negotiation," dated November 29, 2005, issued by the Office of Planning and Management.
Exhibit 8-EX-6	Deleted.

**EFFECTIVE DATE**

Immediately.

**MANUAL IMPACT**

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

**REVISION SUMMARY**

<b><u>Chapter</u></b>	<b><u>Remove Old Page(s)</u></b>	<b><u>Insert New/Revised Page(s)</u></b>
	Remove the following in its entirety:	Replace with the following in its entirety:
8 - Sections	Table of Contents (REV 6/2004) 8.01.00.00 (REV 12/2001) 8.02.00.00 (Rev. 7/98) 8.03.00.00 (Rev. 7/98) and (Rev. 2/99) 8.04.00.00 (REV 12/2001) 8.06.00.00 (Rev. 7/98) and (Rev. 2/99) 8.09.00.00 (REV 12/2001) 8.10.00.00 (Rev. 7/98) 8.16.00.00 (REV 12/2001) 8.50.00.00 (REV 12/2001) 8.69.00.00 (Rev. 2/99) and (Rev. 7/98)	Table of Contents (REV 5/2006) 8.01.00.00 (REV 5/2006) 8.02.00.00 (REV 5/2006) 8.03.00.00 (REV 5/2006) 8.04.00.00 (REV 5/2006) 8.06.00.00 (REV 5/2006) 8.09.00.00 (REV 5/2006) 8.10.00.00 (REV 5/2006) 8.16.00.00 (REV 5/2006) 8.50.00.00 (REV 5/2006) 8.69.00.00 (REV 5/2006)
8 – Forms	Table of Contents (REV 12/2001) RW 8-16 (REV 10/2003)	Table of Contents (REV 5/2006) RW 8-16 (REV 05/2006)
8 – Exhibits	Table of Contents REV 6/2004, REV 6/2005 8-EX-6 (Rev. 6/95) – <b>DELETE</b>	Table of Contents REV 5/2006 -----

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## CHAPTER 8

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02.01	Preparation of Maps
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03.00	State School Lands - General
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03.02	Application Procedure
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<b>8.22.00.00</b>	<b>CALIFORNIA VETERANS' PROPERTY</b>
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<b>8.23.00.00</b>	<b>PUBLIC AGENCIES - JOINT POWERS AGREEMENTS</b>
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<b>8.24.00.00</b>	<b>TAX-DEEDED LANDS</b>
01.00	General
02.00	Agreement to Purchase Tax-Deeded Lands
02.01	City Property
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<b>8.25.00.00</b>	<b>MATERIAL SITES AND DISPOSAL SITES</b>
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<b>8.26.00.00</b>	<b>MUTUAL WATER COMPANY STOCK</b>
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<b>8.27.00.00</b>	<b>SPECIAL ACQUISITIONS</b>
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<b>8.28.00.00</b>	<b>DONATION</b>
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<b>8.29.00.00</b>	<b>DEDICATION</b>
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<b>8.30.00.00</b>	<b>FUNCTIONAL REPLACEMENT</b>
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<b>8.40.00.00</b>	<b>OUTDOOR ADVERTISING STRUCTURES</b>
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<b>8.60.00.00</b>	<b>ESCROWS, TITLES AND SCHEDULING</b>
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02.00	Progress Card
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01.00	Contents of Escrow Instructions
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<b>8.62.00.00</b>	<b>ESCROW PROCEDURE WITHIN THE DISTRICT</b>
01.00	Internal Escrow Procedure - Office Copies
02.00	Use of Acquisition Invoice (Form RW 8-17)
03.00	Preparation of Closing Instructions
04.00	Inventory of Documents
05.00	Scheduling Payment
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<b>8.63.00.00</b>	<b>PAYMENT PACKAGE</b>
01.00	Authority for Scheduling Payments
02.00	Federal Participation Memorandum (Form RW 8-16)
03.00	Preparation of Acquisition Invoice (Form RW 8-17)
04.00	Payee Data Record (STD 204)
05.00	Name of Payee on Acquisition Invoice (Form RW 8-17)
06.00	Assembly of Payment Package
07.00	Approval Signatures
08.00	Verification of Vestee
09.00	Bills for Right of Way Property Transactions
10.00	Correction of Scheduled Amount
11.00	Special Schedules-Condemnation Deposits, Withdrawals, and Expert Witness Claims
12.00	Withheld Payments

**8.64.00.00        RECORDATION OF INSTRUMENTS**

- 01.00        Acceptance Required
- 02.00        Execution of Certificate of Acceptance
- 03.00        Deeds Containing Nonstandard Recitals
- 04.00        Deeds Affecting Unrecorded Interests
- 05.00        Documents Entitled to Free Recordation
- 06.00        Documents Not Entitled to Free Recordation
- 07.00        Real Property Transfer Tax
- 08.00        Director's Deed Recordation

**8.65.00.00        TITLE REPORTS AND POLICIES OF TITLE INSURANCE**

- 01.00        Title Vested in People - Sec. 233 Streets and Highways Code
- 02.00        Title Reports and Certification of Title
- 03.00        Use of Title Reports
- 04.00        Service Contracts with Title and Escrow Companies
- 05.00        Certificate of Regularity
- 06.00        Access Rights Endorsement Forms

**8.66.00.00        CLOSING PROCEDURES**

- 01.00        Segregation of Taxes on Partial Acquisitions of Properties Which are Locally Assessed
- 02.00        Segregation of Taxes on Partial Acquisitions Which are State Assessed
- 03.00        Request for Refund of Prepaid Current Taxes
- 04.00        Notice for Removal of Property From Tax Rolls

**8.67.00.00        FILING OF COMPLETED TRANSACTIONS**

- 01.00        Filing of Recorded Documents and Policy of Title Insurance
- 02.00        Notation on Right of Way Record Maps
- 03.00        Donated Deeds to be Labeled
- 04.00        Documents Affecting More Than One Acquisition
- 05.00        Statements as to Conditions of Title
- 06.00        Right of Way Closing Record
- 07.00        Certification of Completion of Acquisition

**8.68.00.00        OTHER ACQUISITION PAYMENT REQUESTS**

- 01.00        Payment Requests in Condemnation Cases
- 02.00        Miscellaneous Court Deposits
- 03.00        Deposit With Federal Housing Administration
- 04.00        Bid Deposits in Sales of Bankrupt Estates; Administrator's Sales; Payments for Tax-Deeded Lands
- 05.00        Payment of Notary and Recording Fees
- 06.00        General Day Labor Expenditures



<b>8.69.00.00</b>	<b>RAILROADS</b>
01.00	Railroad Function
02.00	Federal-Aid Requirements
03.00	District Responsibility
03.01	Determination of Railroad Involvement
03.02	Acquisition and Document Preparation
03.03	Document Review
03.04	Coordination Activities
04.00	Responsibility of HQ R/W Office of Project Delivery
05.00	Role of the Public Utilities Commission (PUC)
06.00	Powers of the PUC
07.00	Role of the Surface Transportation Board (STB)
08.00	Powers of the STB
09.00	Route Location and Design
10.00	Railroad Advisory Team Concept
11.00	Project Certification - Railroads
12.00	Liaison Procedures with Railroad Companies
13.00	Steps in a Railroad Involvement
14.00	Property Classifications
14.01	Operating Property - Definition
14.02	Nonoperating Property - Definition
14.03	Operating Property - Degree of Title
14.04	Nonoperating Property - Degree of Title
15.00	Acquisition Procedures
15.01	R/W Maps and Legal Descriptions
15.02	Contract and Offer
15.03	Mile Post
15.04	Railroad Contacts
15.05	Title Reports for Exchanges
16.00	Railroad Payments
16.01	Minimum Payment of \$1,000
16.02	Right of Entry - Interest Payment
16.03	Railroad's Lessees
16.04	Purchase of Track
16.05	Transverse Crossings
17.00	R/W Agreements and Contract Clauses with Railroads
18.00	Deed Clauses with Railroads
19.00	Railroad Indentures (Easement)
19.01	Standards of Acceptability
19.02	Easements for Highway Widening
19.03	Drainage Easements
19.04	Easements in Limited Vertical Dimension (Aerial Easements)
19.05	Standard Indentures
19.06	License for Minor Installations on Right of Way

<b>8.69.00.00</b>	<b>RAILROADS (Continued)</b>
20.00	Drilling Permits
21.00	Acquisition of Railroad Access Rights
22.00	Replacement of Railroad Buildings
22.01	Determination of Use - Replacement
22.02	Buildings - Betterment and Credits
23.00	Railroad Rights of Entry
23.01	Types
23.02	Standards of Acceptability
23.03	Processing
24.00	Summary of Railroad Transactions
24.01	Standard Memorandum of Settlement
24.02	Short Form Railroad Memorandum of Settlement

## **8.00.00.00 - ACQUISITION**

### **8.01.00.00 - ACQUISITION GENERAL**

#### **8.01.01.00**      **Function and Responsibility**

The Acquisition Branch is responsible for the timely securing of those property rights necessary to the certification of a project. Certification, insofar as the Acquisition Branch is concerned, means that any and all interests in the property adverse to State's use have either been cleared or the documents or legal process which will legally authorize entry by the Department have been secured.

Private property or interests therein will be acquired in accordance with Article I, Section 19 of the California Constitution.

*"Sec. 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation."*

#### **8.01.02.00**      **Government Code Requirements**

In addition to the constitutional requirement, acquisition of private property for public use is also to be in accordance with sections of the Government Code entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act." Compliance with the Department's policy of paying just compensation should be assured when the constitutional and Government Code requirements are adhered to by the Acquisition Agent in dealing with the owners. (See "Statutes Relating to the California Department of Transportation.")

#### **8.01.02.01**      **Real Property Acquisition Practices**

*7267. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, be guided by the provisions of Sections 7267.1 to 7267.7, inclusive, except that the provisions of subdivision (b) of Section 7267.1 and Section 7267.2 shall not apply to the acquisition of any easement, right of way, covenant, or other nonpossessory interest in real property to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface sewers, water lines or appurtenances, drains, septic tanks, or storm water drains.*

#### **8.01.02.02**      **Appraisal and Negotiation**

*7267.1. (a) The public entity shall make every reasonable effort to expeditiously acquire real property by negotiation.*

*(b) Real property shall be appraised before the initiation of negotiations, and the owner, or his designated representative, shall be given an opportunity to accompany the appraiser during this inspection of the property.*

**8.01.02.03**      **Offers, Value, and Appraisals**

*7267.2. Prior to adopting a resolution of necessity pursuant to Section 1245.230 and initiating negotiations for the acquisition of real property, the public entity shall establish an amount which it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a Resolution of Necessity or both. In no event shall such amount be less than the public entity's approved appraisal of the fair market value of the property. Any decrease or increase in the fair-market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property. The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.*

**8.01.02.04**      **Prior Notice to Move**

*7267.3. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90 days' written notice from the public entity of the date by which such move is required.*

**8.01.02.05**      **Continuation of Possession on Rental Basis**

*7267.4. If the public entity permits an owner or tenant to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the public entity on short notice, the amount of rent required shall not exceed the fair rental value of the property.*

**8.01.02.06**      **Coercion**

*7267.5. In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.*

**8.01.02.07**      **Institution of Condemnation Proceeding**

*7267.6. If any interest in real property is to be acquired by exercise of the power of eminent domain, the public entity shall institute formal condemnation proceedings. No public entity shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.*

**8.01.02.08**      **Uneconomic Remnant**

*7267.7. If the acquisition of only a portion of a property would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the public entity shall offer to acquire the entire property if the owner so desires.*

**8.01.02.09**      **Indemnity Clauses in Right of Way Contracts**

**Government Code Section**

***Indemnification of Grantor Includes Railroads***

***14662.5. In any agreement entered into whereby the State obtains a grant of easement, lease, license, right of way, or right of entry (including without limitation, a right of way, or right of entry on or over property of any railroad), the state agency or its director entering into the agreement on behalf of the State may agree to indemnify and hold harmless the grantor, lessor, or licensor and may agree to repair or pay for any damage proximately caused by reason of the uses authorized by such easement, lease, license, right of way, or right of entry agreement.***

**8.01.03.00**      **Negotiating Procedure**

All acquisition discussions shall be directed to accomplish the end result that the property owner receives just compensation which is also just and fair to the public; that every courtesy, consideration, and patience is extended to the property owner, and to foster a feeling of confidence and respect by the property owner toward the Department of Transportation and its employees. All offers shall represent the best and most current estimate of market value determined through sound, approved appraisal and acquisition practices.

Prior to any discussion as to the terms of the Right of Way Contract and the compensation to be paid, the property owner should be given full information as to the following:

- A. The role of the Department and its acquisition functions.
- B. The necessity for the proposed transportation improvement.
- C. Project design and how the proposed improvement will affect the property.
- D. The ability of our appraisal staff and the honest and sincere effort that has been made to determine the market value of the property. During the course of acquisition discussions, agents must remember that they are representing the interests of the public as well as that of the property owner. Care should be exercised at all times to protect the interests of the property owner, particularly if the owner may be unfamiliar or inexperienced in real estate transactions and real estate values.

If during the course of discussions for the purchase of the property, conditions or characteristics are discovered which were not available to be properly considered in the appraisal, these matters shall be fully considered and evaluated before acquisition of the property is continued.

Prior to conducting any acquisition discussion, the acquisition agent should be familiar with the following referenced material:

- A. Acquisition Chapter of the Right of Way Manual.
- B. Housing and Community Development (HCD) Guidelines, Article 6 (Exhibit 8-EX-1).
- C. 23 CFR 710.101 through 710.603 and 49 CFR 24.101 through 24.108.
- D. Sections 301 and 302, Title III, Uniform Real Property Acquisition Policy Act (Exhibit 8-EX-2).

Section 6194(a) of the HCD Guidelines, 2<sup>nd</sup> paragraph, dealing with rental rates based upon financial means, is neither the policy nor procedure of the Department. Again, any conflict in these guidelines is to be resolved in favor of the Uniform Act (Government Code Section 7260, et seq.). The HCD guidelines have been supplied for information purposes and are not to be construed as establishing a policy or procedure at variance with the Uniform Act.

The Acquisition Agent shall be familiar with Departmental policy relating to the acquisition of property and, in particular, the following statements of policy.

- A. All discussions for the acquisition of property or an interest therein shall be directed to result in the payment of just compensation.
- B. The Department shall make every reasonable effort to expeditiously acquire property through agreement with its owner.
- C. The property or interest therein shall be appraised prior to the initiation of discussions leading to its purchase.
- D. A prompt offer to acquire the property shall be made.
- E. The full amount of the appraisal shall be offered when price is first discussed.
- F. When acquiring real property subject to a lease, determine if there is a need to segregate the lessor's and lessee's interests prior to making a written offer.
- G. The property owner shall not be permitted any option privileges of repurchasing either land or improvements that the Department may subsequently declare to be excess property. No such obligation will be included in any right of way contract. No oral or written representation in this respect shall be made.
- H. The Acquisition function shall be conducted in such a way and manner as to assure that no person shall, on the grounds of race, color, sex, or national origin, be denied the benefits to which the person is entitled, or be otherwise subjected to discrimination, in compliance with Title VI of the 1964 Civil Rights Act (43 USC 2000d, et seq.).
- I. Agents who prepare appraisals shall not negotiate for the acquisition of parcels they have appraised except as noted in Section 8.01.08.00 and the Appraisal chapter.
- J. Agents shall not negotiate for any property in which they or their relatives, friends, business associates or others with whom they are closely associated have any personal or financial interest.
- K. The Agent assigned to acquire a property shall maintain a timely written record of all contacts with the owner or owner's representative and any tenants or lessees.
- L. In completing and reporting a transaction, the acquisition agent shall prepare a complete written explanation which will leave no doubt in the mind of the reviewer that all elements of the transaction were given adequate and equitable consideration.

#### **8.01.04.00**      **Assignments**

The Agent assigned parcels for acquisition will review the appraisal with the Senior Right of Way Agent-Acquisition and the appraiser. A field review with the appraiser will be made, if necessary, so the agent will have the benefit of all information used by the appraiser for determination of values.

The DDC-R/W or the Acquisition Branch Chief will ascertain that the agent has all of the information necessary to conduct and complete negotiations for the orderly and efficient acquisition of the right of way. This information shall include, but not be limited to:

- A. Current title reports.
- B. Approved appraisal.
- C. All factual data compiled by the Appraisal Branch for preparation of the appraisal.
- D. Necessary right of way maps, plans, profiles, cross sections, and construction details.
- E. Adequate time to study the parcels in the field.

#### **8.01.04.01**      **Acquisition by Mail**

When warranted by cost and good business considerations, the Districts may accomplish acquisition through the mail or fax—especially the acquisition of noncomplex parcels.

For example, where the appraiser of a noncomplex \$10,000 or less parcel also acts as the acquisition agent, the initial inspection of a property with the owner and the initial offer (if made to the owner at the same time as the initial inspection) will, of course, take place in the course of a personal contact with the owner. The District, however, may consider conducting any subsequent negotiations with the owner by mail or fax.

If a property owner resides in the State but in a county outside of the District, and it is not practical for the agent to make a personal call, a letter may be addressed to the District Director in whose District the property owner resides. This letter shall contain details relative to the purchase, together with the necessary documents, to enable the DDC-R/W to assign an agent to handle the acquisition.

The District should always consider the complexity of the transaction prior to requesting that property be acquired by the District in which the absentee owner lives. This is primarily because the agent assigned the parcel will have personally inspected the property in the process of reviewing the appraisal and have more familiarity with it and the related comparable sales. This approach should be used only in acquisitions which do not involve relocation assistance and which are nominal in value. Individual cases otherwise qualified for handling by mail may require personal contact. In addition, if the property owner resides outside of the State, acquisition should be carried on through the mail or fax. In transmitting the Contract and Deed, the agent is to express the terms and conditions of the transaction clearly and concisely and include maps showing the right of way requirements. See Section 8.01.11.00 for a discussion on the delivery of documents.

#### **8.01.05.00**      **Acquisition Branch Responsibility in Certification Process**

The Acquisition Branch must assure that all property interests affected by a project, except utility relocation, have been or will be secured. Arrangements must be made for the removal, relocation or protection of any building improvement or other obstruction. All of these steps must be performed within the limits of Departmental policy and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. They must also be completed in time to meet the scheduled project certification date.

Prompt calls must be made on all property owners or interests which will be affected by clearance of the right of way. Early identification of design, construction or relocation problems should assure that ample time is available for their resolution.

For certification purposes, real property interests are secured by obtaining a properly recorded conveying document, Contract with possession clause, Order for Possession, Recordation of Final Order of Condemnation or Right of Entry. Bureau of Land Management Decisions, Forest Service Letters of Appropriation and Construction Permits qualify as conveying documents in the certification process.

The Branch Chief will establish lead time requirements which will allow time for the sending of a Notice of Intent. California Transportation Commission action, suit preparation, service of summons and complaint, and Order for Possession procedures all require substantial periods of time which affect certification dates. There should be a clear understanding between the Branch Chief and Agents regarding problem areas, such as difficult or complex acquisitions, property owners unavailable for discussions, whether publication of summons is necessary, or difficult or complex acquisitions involving building relocation, cutting and refacing of improvements, or abandoned property within the right of way.

Essentially, the responsibility of the Acquisition Branch in the certification process is to document that all interests adverse to the Department's ability to enter and/or clear a property have either been secured or all such interests will be secured by a certain date based on an executed document or legal process.

#### **8.01.06.00**      **Parcel Diary**

The purpose of the parcel diary is to record all contacts and efforts used by the Department to acquire the assigned parcel through settlement and negotiation prior to litigation.

If an action in Eminent Domain is filed, the parcel diary will be turned over to the attorney assigned to assist in the presentation of the Department's position. Parcel diaries are protected, to a small degree, from the Public Records Act and should not be provided to the owners or their representatives per an informal request. However, the parcel diary can be entered into the court proceedings (including relocation assistance appeals) as evidence, especially when the agent or attorney refers to a statement in the diary about the offer. Therefore, it is imperative that remarks in the diary refer only to the negotiations and discussions with the owners/occupants, and do not include any comments or feelings that would cause embarrassment if they become a part of the court records.

The parcel diary is generally initiated by the appraiser. The acquisition agent must maintain the diary for each assigned ownership. It will reflect the offer and status of the Department's contacts and conversations with all interested parties. It will remain with the agent's individual parcel folder until the parcel is acquired and thereafter shall become part of the permanent parcel file.

All contacts with property owners, attorneys for State or owner, witnesses or other interested parties must be shown until the parcel is closed.

The form of parcel diary and detailed instructions regarding entries are shown on Form RW 7-1. Form RW 7-23 shall be used when a loss of goodwill claim is involved.

#### **8.01.07.00**      **Separation of Acquisition and Relocation Assistance Functions**

A clear separation must be maintained between the acquisition and relocation assistance functions except when using the single agent/"caseworker" approach (Section 8.01.09.00). Departmental legal opinions have stressed that the enactment of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended April 2, 1987 was not meant to be an expansion of just compensation, but a separate obligation of the displacing agency.



#### **8.01.07.01**      **Waiver of RAP Benefits**

Waivers of RAP benefits shall not be made a part of a negotiated acquisition settlement. Waivers for reimbursement of moving costs when an owner retains items of realty as provided in Section 8.06.03.00 are not involved herein. See Section 8.06.22.00 for procedures where RAP benefits do not accrue.

#### **8.01.08.00**      **Separation of Acquisition and Appraisal Functions**

The Departmental policy is to avoid assignments which may result in conflicts of interest. An agent shall not act as both the appraiser and acquisition agent of real property where the cash to grantor exceeds \$10,000 and/or there is significant Construction Contract Work (other than replacement of existing facilities such as road approaches, fencing, irrigation pipelines, etc.). This \$10,000 limit may be exceeded by the use of nonsubstantial administrative settlements (see Sections 7.01.05.00, 8.02.02.00, 8.03.08.00, 8.50.01.00, and 10.01.13.00 for single agent, under \$10,000 process).

If the total fair market value of a parcel, including construction contract work, is \$10,000 or less, the same person may estimate and acquire the required interest through the use of a Waiver Valuation. (See Valuation Summary Statement requirements, Section 8.02.00.00.) The Waiver Valuation is not an appraisal and cannot be used for condemnation purposes. Prior to requesting a Resolution of Necessity for condemnation, an appraisal report must be prepared. An Appraisal Summary Statement (8-EX-15A) and Summary Statement Relating to the Purchase of Real Property or an Interest Therein (8-EX-16) must also be prepared and given to the property owner/lessee. See Sections 7.01.02.00, 7.02.13.00, 7.02.13.01, and 7.02.13.02 for a complete discussion of Waiver Valuation.

#### **8.01.09.00**      **Explanation of Relocation Assistance Program (RAP)**

When negotiations are initiated with the property owner, or the owner's representative for any owner-occupied property, and upon receipt of the U.S. Residency Information (Form RW 10-44), the agent will explain the Relocation Assistance Program to the owner or representative. Tenants in possession under valid agreement will have the Program explained by the RAP agent. The acquisition agent must be familiar with the contents of the RAP Chapter.

At the option of the District R/W Office, the acquisition agent may implement a single agent/"caseworker" approach for nonresidential/business owner-occupied properties.

If the single agent/"caseworker" approach is used, the agent doing the combined acquisition and RAP work should be well experienced and trained in both functions, and have sufficient time to handle both transactions. In cases of complex nonresidential moves, it is desirable to have a highly experienced RAP agent or a specialist handle such cases.

Under the conditions outlined above, it would be acceptable to have an assigned acquisition agent handle simple tenant-occupied nonresidential/business moves as well.

The single agent/"caseworker" approach is most often utilized on parcels where the total fair market value, including construction contract work, is \$10,000 or less. In these situations, the agent should be cognizant of relocation issues that may be encountered. See Section 10.01.13.00 of the R/W Manual for more information regarding relocation associated with the single agent process and the proper forms to be used. The agent's file should fully document all appraisal, acquisition, and relocation activities associated with the transaction.

#### **8.01.10.00**      **Offers to Purchase Must Be Made Promptly**

Federal, State, and Departmental policy require that a prompt offer be made to purchase property. In an active market, an appraisal may be outdated in a very short time. Failure to make prompt offers in such cases is not only inconsistent with proper acquisition procedures, but may lead to unnecessary reappraisal activity.

All offers should be made within 30 days of the approval of the appraisal. If unusual circumstances cause delays in making prompt offers, the parcel diary must contain appropriate entries to document the reason for that delay.

#### **8.01.11.00**      **Offers and Documents Delivered to Owner**

The Contract containing the offer should be handed to the property owner, or owner's authorized representative, by the agent at the first contact when price is discussed. In limited instances, an acquisition discussion could occur without handing the contract to the owner, i.e., lessee-owned improvements or lack of agreement as to ownership of improvements. When improvement ownership is established, the Appraisal Summary Statement or Valuation Summary Statement and Summary Statement Relating to the Purchase of Real Property or an Interest Therein are to be delivered without delay. See Section 8.02.00.00.

In addition to the Contract, the Appraisal Summary Statement or Valuation Summary Statement and the Summary Statement Relating to the Purchase of Real Property or an Interest Therein, the agent shall also deliver the following documents to the owner as applicable: Grant Deed, Easement Deed, Owner's Certification of Tenants (RW 10-1), Certificate of Occupancy and Receipt of Relocation Information (RW 10-25), Rental Escrow Instructions (Exhibit 8-EX-3), Rental Agreement (Exhibit 8-EX-4), Information Sheet for Owner(s) Regarding Property Tax Relief (Exhibit 8-EX-49), and the Department's Brochure and Letter. The agent must verify that the property owner has received the Title VI Civil Rights information. Appropriate entries shall be made in the Parcel Diary and the information supplied if the property owner has not received it.

All occupancy certifications must be completed at the time of initiation of negotiations to establish eligibility for relocation benefits. Certifications obtained along with a copy of all RAP documents presented at the initiation of negotiations are to be forwarded to the RAP Senior within two working days of the initiation of negotiations (see Manual Section 10.01.11.05). Diary entries on the correct form are to be included with the above documents. Certification on vacant unimproved land is needed only if some personal property is stored on the property. If the property owner will not sign the occupancy certifications, a complete diary entry to that effect must be made.

An Offset Statement should be secured, if feasible, on properties occupied by tenants who own or claim ownership in some of the improvements. See Section 8.04.15.00.

If Rental-Escrow instructions are secured, copies of such instructions are to be delivered to the Relocation Assistance Branch subsequent to the Initiation of Negotiations (ION) and to the Property Management Branch immediately after the Contract has been accepted on behalf of the State by the DDC-R/W, or delegate. If the property owner has received rent for vacated units, as described in Section 8.01.31.00, a reconciliation of such payments and Rental-Escrow instructions shall be made in order to avoid conflicts and ensure that State payment ends at close of escrow or date of possession.

When structural improvements are within or partially within the right of way, the initial offer will be on the basis of purchase of the improvements. The property owner *may* then be given the option to either retain improvements or arrange for their relocation in lieu of purchase. See Sections 8.06.07.00, 08.00 and 09.00.

The acquisition agent will provide Summary Statements to parties having an interest in the property. These statements shall show values of the property required, damages, if any, and the total payment. If the value of the appraisal is changed, updated Summary Statements shall be provided. Administrative settlement offers or independent condemnation appraisals do not require revised Summary Statements. See Section 8.02.00.00, et seq., for a detailed discussion on Summary Statements.

When it becomes necessary to transmit offers by mail, as in the instances described in Section 8.01.04.01, "Acquisition by Mail," or when an owner or authorized representative demands that the offer be presented in writing, the offer shall be stated in the following manner:

- A. In instances where no condemnation action has been filed: "Enclosed is a Right of Way Contract (in duplicate), in the amount of \$\_\_\_\_\_, which contains all of the terms and conditions of this transaction."
- B. In instances where a condemnation action has been filed: "In order to dispose of pending litigation, we hereby offer you \$\_\_\_\_\_ to settle the above-named parcel."

#### **8.01.11.01**      **Administrative Methods to Avoid Acquisition of Excess Parcels**

To avoid acquiring low-valued, fragmentary excess parcels and carrying such parcels in the excess lands inventory, the Districts may offer the following incentive to property owners as a nonsubstantial Administrative Settlement: Whenever uneconomic remnants have an after-value of \$5,000 or less, the property owner may retain the uneconomic remnant remainder and be paid as if the Department had acquired it as excess land.

Acquisition agents are encouraged to exchange excess lands adjoining or near the acquisition parcel at time of acquisition. If necessary, excess land can be exchanged subject to a temporary construction easement required to construct the Department's project. See Manual Sections 8.12.01.00, et seq., for further procedures regarding Exchanges and Abandonments.

#### **8.01.12.00**      **Property Owner's Right to Review Department's Appraisal**

Government Code Section 7267.2 provides in part that:

"Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based."

This statutory right will be complied with by giving each qualified property owner an Appraisal Summary Statement. The Summary Statement will advise the qualified owner of the right to review the appraisal upon which the offer on that property was based. A parcel diary entry is to be made indicating the qualified property owner was orally informed and given the Appraisal Summary Statement. See Section 8.02.01.00, et seq.

If the property owner wants to review the appraisal, the following conditions apply:

The right to review is restricted to the approved appraisal and any revisions on which the initial or any subsequent offers are based. It does not apply to independent or staff reports prepared for use in condemnation. Restrictions on disclosure of RAP valuation data are discussed in the RAP Chapter.

The right to review applies to those elements of the appraisal report relevant to the determination of the value estimate including narrative material relating specifically to subject property, comparable sales data, appraisal, and sales maps. Should the owner request that the copy be reviewed by an attorney or other representative, this request must be in writing.

The right to review applies to any type of acquisition as long as the property is an owner-occupied residential property containing four units or less.

#### **8.01.13.00**      **Use of Primary or Alternate Appraisal Reports**

The District may pursue negotiations with a property owner on the basis of either the primary or alternate appraisal, provided both have received unqualified approval.

The decision to use the alternate must be justified and documented in the file. See Section 7.03.03.00 for a discussion of Alternate Appraisals. Approval as to value only, or other limiting language, is not considered as unqualified approval.

#### **8.01.14.00**      **Current Status of Market Value**

The acquisition agent, in discussions with property owners or owner's representative, should solicit information such as sales which the owner may be relying on to support an opinion of value.

Whenever pertinent information is obtained that suggests a change in value on the property to be acquired, the acquisition agent shall supply such data to the Appraisal Branch with a request that the appraisal be reviewed and updated as necessary. The analysis of such sales data is the function of the Appraisal Branch. In an active real estate market, the Appraisal Branch should be supplied with any new data so investigation and analysis of such is reflected as soon as feasible in revision of appraisals.

The Appraisal Branch will analyze the new data and determine its applicability to unacquired parcels. If the Appraisal Branch determines adjustment is not warranted, the Acquisition Branch will be notified. If the Appraisal Branch determines adjustment is necessary, the following action will be taken:

Depending upon time and available personnel, the appraisal will be either revised and, when required, submitted to HQ R/W for approval, or a Memorandum of Adjustment made and furnished to the Acquisition Branch. If variations of value are found which do not justify appraisal revisions due to their minor nature, the Acquisition Branch will be notified and advised to make the necessary adjustment at the time of settlement and include the supporting data in the Memorandum of Settlement (MOS).

#### **8.01.15.00**      **Negotiating With an Attorney or Third Party**

Unless otherwise authorized by the property owner, all acquisition discussions shall be with the owner. When an attorney has been retained by the property owner, acquisition discussions will generally be with the attorney. In some instances, an attorney will consent to further discussions between the agent and property owner. Since variations of this are probable, the agent should attempt to establish clear guidelines with the attorney, in writing, for such discussions.

If the property owner employs someone as a representative to conduct discussions, care must be exercised in establishing the extent of the authority of the owner's representative. Such authority or agreement must be in writing from the property owner.

Whether dealing with an attorney or other type representative, it is essential that clear ground rules are established since no two such acquisitions involving third parties are identical. The Acquisition Branch may sometimes find it desirable or necessary to involve the Regional Legal Office in communicating with the property owner's attorney.

#### **8.01.16.00**      **Exchange of Noncontiguous Land or Land Yet to be Acquired**

All exchanges are subject to approval by the California Transportation Commission (CTC). Excess real property may be used in exchange for all or part consideration for other property required for State Highway purposes. Exchanges of land in right of way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. The prior approval of HQ R/W must be obtained before noncontiguous excess real property or property yet to be acquired is proposed for exchange in a Contract. A copy of the authorization will be included in the MOS. Finding “A” or “B” situations are the most acceptable type exchange. It is Departmental policy to dispose of excess property by public sale whenever possible. Exchanges are justified if sale of an excess parcel to the general public would be injurious to the interests of the abutting owner or if damages are minimized by an exchange and the grantor’s property rehabilitated to permit the highest and best use. For a complete discussion of this topic, see Section 8.12.00.00.

#### **8.01.17.00**      **Request for Appraisal Review Prior to Commencement of Eminent Domain Proceedings**

The District must ensure that the outstanding offer reflects current market value. The Departmental policy is to make every reasonable effort to acquire property expeditiously and pay just compensation. During the negotiation process, the agent should be able to determine if an adjustment in the appraisal could lead to a settlement. Prior to commencing eminent domain action, the agent will provide the Appraisal Branch with all pertinent information which has been obtained and which may have an effect on the market value of the property.

At least 60 days prior to the mailing of the Notice of Intent, the Acquisition Branch shall submit a “Request for Confirmation of Market Value” (Exhibit 8-EX-5) to the Appraisal Branch to ascertain whether the staff appraisal represents current market value. The Appraisal Branch will review and either confirm or revise the valuation of parcels to be included in a condemnation suit and report their findings to the Acquisition Branch. See also Section 8.01.19.00.

#### **8.01.18.00**      **Appearances by Property Owners Before the Transportation Commission**

Initiation of the condemnation process, as it affects a property owner, commences with the mailing of the “Notice of Intent (Notice).” See Form RW 9-1 and Section 9.01.04.00.

The Notice advises the property owner that the State intends to seek authority from the California Transportation Commission (CTC) to institute eminent domain proceedings. Authority is the “Resolution of Necessity” (Resolution) adopted by the CTC. This gives the Department the right to file a condemnation action and, subsequently, with the approval of the Superior Court, take possession of the property.

The property owner has the right to contest the adoption of the “Resolution.” The “Notice” informs such owner what steps are to be taken to exercise that right. (See Section 9.01.06.00.)

Property owners must file a written request with the CTC to appear before them within 15 days of the mailing of the “Notice” [CCP Section 1245.235(3)]. Upon receipt of the owner’s request to appear, Headquarters will instruct the District to conduct a Condemnation Evaluation Meeting (see Section 9.01.07.00). The participants at this meeting will be the District Director, Deputy District Directors from Design and Right of Way, and the owner and/or their representative(s). This meeting should be limited to the appropriate functional managers, the Single Focal Point, and the Headquarters Design Coordinator. Other staff should be available on standby or by phone to be called upon as deemed appropriate to provide supplemental project information to the participants, if necessary. The Deputy District Director of Right of Way will chair the meeting. The Chair reminds the owner the CTC will only consider issues of project need, project design, and necessity of purchasing the owner’s property; the CTC will not consider issues of compensation.

District management will have the opportunity to hear and discuss the issues of both sides regarding the acquisition of the subject property. This may result in the District modifying its requirements, resulting in agreement, or confirming their position.

If this review does not result in agreement and the District's recommendation is to proceed with the project, District Design in coordination with Right of Way will prepare an Appearance Information Sheet (AIS) and Fact Sheet [[http://www.dot.ca.gov/hq/oppd/pdpm/apdx.htm/apdx\\_jj/apdx\\_jj.htm](http://www.dot.ca.gov/hq/oppd/pdpm/apdx.htm/apdx_jj/apdx_jj.htm)] which will be sent to the Headquarters Chief, Division of Design (DOD) for processing, with a copy to HQ Chief, Division of Right of Way and Land Surveys (R/W&LS). This submittal serves as the District's request to HQ to schedule the Condemnation Review Panel (Panel) to begin review of the project in pursuit of a Resolution of Necessity. After the Panel has reviewed the facts presented in the AIS, a decision will be made by the Division Chiefs of both HQ DOD and R/W&LS, whether or not to proceed to a Condemnation Panel Review Meeting (see Section 9.01.08.00) by the Condemnation Review Panel. The Panel will consist of representatives from HQ R/W&LS (as Chairperson), Legal, and DOD. The R/W panel chairperson will designate a R/W staff person to serve as the secretary to the Panel. As with the District Condemnation Evaluation Meeting, the owner and/or their representative will present their position as to why the property should not be acquired by the Department and the District will present the project scope and project impact.

After this review, the Panel will make either a recommendation to the District for action to resolve the problem or to the Chief Engineer to proceed to the CTC to secure a "Resolution." The determining factor will be whether or not the District has complied with all of the requirements necessary in designing the project and in attempting to acquire the property in question. The date selected for presentation to the CTC will be governed by the completeness of the AIS and Fact Sheet, whether or not the matter is to be elevated by the Panel, and the time required for the Panel to perform its function in relation to the monthly cutoff dates for submitting agenda items (with supporting documentation) to the CTC.

The CTC is limited in its consideration by Section 1245.230 of the CCP to the following three conditions: (1) the public interest and necessity require the project; (2) the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (3) the property described in the resolution is necessary for the proposed project.

At the CTC meeting, property owners or their representatives may raise questions regarding the acquisition during the presentation of the arguments opposing adoption of the "Resolution." As such, it is imperative the information contained in the AIS and Fact Sheet be up to date, complete and factual.

The District Condemnation Evaluation and Condemnation Panel Review meetings shall be conducted separately to afford the District every opportunity to discuss the project and to negotiate a settlement with the property owner. The District Condemnation Evaluation meeting must be held far enough in advance of the Condemnation Panel Review meeting to allow adequate time for the District to consider and evaluate recommendations discussed at the District meeting. Results of all evaluations are to be included in the Appearance Information Sheet (AIS) and the District's presentation during the Condemnation Panel Review meeting.

The Chief Engineer has delegated the District Director the authority to combine the District Condemnation Evaluation and Condemnation Panel Review meetings for those projects where the property owner's issues are not related to the project's design. When this authority is exercised, the District Director shall provide in writing to the Chief Engineer, Attn: Chief DOD, a notice of the decision to combine the meetings and verification that the property owners' issues are not design related. The District will be responsible for notifying the Panel secretary to coordinate the Panel's participation at the combined meeting. The District also assumes the responsibility of preparing and finalizing the Appearance Information Package which includes the Panel Report (see Exhibit 9-EX-1), and to prepare the District Director or Deputy District Director to present the Department's

draft CTC presentation to the Chief Engineer at the Resolution of Necessity Dry Run held in Headquarters. The Single Focal Point will coordinate the District's handling of the necessary deliverables and will be responsible for assessing potential risks for the District. The Chief Engineer will determine at the conclusion of the District's Resolution of Necessity Dry Run presentation if the "Resolution" is ready to move forward to the CTC for consideration. The Panel Report, which is approved by the Chief Engineer, is the Department's authorization to proceed before the CTC to obtain the Resolution of Necessity. The District is required to meet the Office of CTC Liaison's predetermined deadlines [<http://onramp/hq/transprog/>] for submittal of documents and presentations so book items can be finalized for the CTC's agenda.

Specific details regarding the Resolution of Necessity Process, procedures for performing the District Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting, along with outlines and suggested formats for the AIS and Fact Sheet are found in Chapter 28 of the Project Development Procedures Manual [<http://www.dot.ca.gov/hq/oppd/pdpm/chap.htm/chapt28/chapt28.htm>].

#### **8.01.19.00 Use of Staff Independent or Fee Appraisers**

Once the decision to proceed with condemnation is made, the Appraisal Branch will be requested to complete Exhibit 8-EX-5, "Request for Confirmation of Market Value," including page 2 regarding "Employment of Appraiser."

This procedure is intended to ensure:

- A. That the staff appraisal is revised, if market data justifies such a revision, so current market value offer can be made to the property owner *before* condemnation is started; and
- B. That qualified *staff* personnel are used whenever possible in lieu of independent fee appraisers, in accordance with SPB rules.

#### **8.01.20.00 Payment of Out-of-Pocket Expenses**

The Department may reimburse property owners for expenses incurred in development of a property, when development is interrupted by acquisition, provided certain criteria are met and an audit of the validity of the claimed expenses supports such payment. When an owner requests payment for such expenses:

- A. The property owner will be requested to complete and sign three copies of a "Claim for Payment of Expenses Actually Incurred." One copy should be retained by the owner, one copy for the District Right of Way files, and the third copy submitted by the District to the Audit Function, Office of Audits and Investigations with a request for an audit.
- B. The audit, in addition to verification of the expenses, will identify the expense items that are reimbursable by the State, e.g., map checking fees, building permit fees, architectural plans, materials, services, etc. The audit will also identify those items which are not reimbursable and the reasons therefor.
- C. During the course of the audit, Appraisal Branch personnel should assist in the review of the reasonableness of the expenses claimed. Development plans will be reviewed to determine whether they are reasonable for the proposed development and contribute to the market value of the property. This review may also reveal whether any expense item claimed might have already been considered and included in the approved appraisal.

- D. A nonsubstantial payment based on the total of the audit recommended expenses may be authorized by the District on an administrative basis. Agents must check the current R/W Planning and Management Delegation of Authority matrix to determine the maximum amounts Districts and Regions may authorize. A substantial payment requires prior approval of HQ R/W.

Claims for these types of expenses may also be made on unacquired parcels when negotiations have been suspended on routes which are deleted. If the property owner's financial outlay meets the criteria of a contribution to the value of the property and subsequently the materials, services, plans, etc., cannot be used as a result of our actions, or lack thereof, then such claim should be processed (and coordinated with the Regional Legal Office in cases involving abandonments or the elimination of contractual obligations) on the same basis as though the State were completing the acquisition of the property. See Exhibit 8-EX-7.

#### **8.01.21.00      Impounded Funds Held for Tax Payments**

Lending institutions may, as part of monthly real estate loan payments, require sufficient funds to accumulate in an impound account for payment of property taxes. When the agent determines that a lending institution is impounding funds for tax payments on the parcel being acquired, the agent should advise the grantor to contact the lending institution and arrange for a refund of the pro rata share of such impounded funds.

#### **8.01.22.00      Notification to Property Owner Regarding Tax Liability and Property Tax Relief**

Sections 5084, 5085 and 5086 of the Revenue and Taxation Code provide procedure for the collection or cancellation of real property taxes on property being acquired under authority of eminent domain statutes. See Sections 8.04.24.00 and 8.04.26.00.

While the Revenue and Taxation Code authorizes payment of unpaid taxes and current taxes out of escrow or out of the award in an eminent domain action, some tax collecting agencies may not, after notification by the District, place a demand for such taxes. These tax collecting agencies may prefer to have such taxes transferred to the unsecured roll for eventual payment, or in the case of a partial acquisition with subsequent segregation, the unpaid or current taxes are billed with future tax bills.

The property owner should be advised that unpaid or current taxes may be paid out of escrow if the tax collector places a timely demand or they may be transferred to the unsecured roll for subsequent payment. Notification to the tax collecting agency of our acquisition and the availability of funds should eliminate any State liability imposed by the Revenue and Taxation Code.

Payment for property being acquired must not include payment for any tax—delinquent, unpaid or current.

The agent should explain to the grantor that the area conveyed to the state in a partial acquisition will be segregated and not subject to future liability by the local taxing agency.

When the grantor retains improvements, they should be informed that when the improvements are removed from the secured property roll and transferred as personal property to the unsecured property roll, they will be assessed as the personal property of the grantor. Grantor should be advised that personal property taxes are their obligation and are generally included as a separate item on the tax bill. See Section 8.06.11.00.



The property owner should be advised that Section 2(d) of Article XIII A of the California Constitution and Section 68, Revenue and Taxation Code generally provide that property tax relief shall be granted to any real property owner who acquires comparable replacement property after having been displaced by governmental acquisition or eminent domain proceedings. Exhibit 8-EX-48 lists guidelines prepared by the State Board of Equalization and Exhibit 8-EX-49 is an informational sheet to be reproduced and given to owners.

#### **8.01.23.00**      **Refund of Prepaid Current Taxes**

The taxpayer whose property is to be acquired is entitled to a refund of prepaid current taxes which would have been subject to cancellation, if unpaid. The person who paid the taxes must request the refund after the close of escrow. The acquisition agent shall inform the grantor (taxpayer) that any refund will be paid only after the grantor personally applies to the City or County Tax Collector.

For disposition of prepaid current taxes on property acquired by Eminent Domain, see Sections 8.04.24.00 through 8.04.26.00.

#### **8.01.24.00**      **Grantor's Obligation to Pay Personal Property Tax**

Property owners should be advised of their obligation to pay personal property taxes. These personal property taxes are generally included as a separate item in the tax bill.

#### **8.01.25.00**      **Title Services on Low Valued Parcels**

Normal title services may be waived for parcels where the indicated value will be \$2,500 or less, except where it is prudent to utilize those services or as a condemnation proceeding requirement. The potential existence of parcels falling into this value range should be identified early by joint effort of the Right of Way Engineering personnel with the Appraisal and/or Estimating staff(s).

Ownership and legal descriptions of these properties may be obtained by staff personnel from the public records or by title company Record Owner Guarantee. In either event, the Acquisition Agent shall make a reasonable attempt to determine what items, if any, should be taken subject to and what items may be so detrimental as to require clearance. Provision must be made for the payment of any delinquent taxes on a total acquisition. One of the standard indemnification clauses should be included in the contract. See Section 8.04.04.00. Waiver of normal title services does not mean the Acquisition Agent should not make a reasonable effort to eliminate title exceptions which may be detrimental to State's title.

#### **8.01.26.00**      **Payment for Parcels Appraised as Nominal**

When the total appraised value of all property rights or interest to be acquired from an ownership is \$2,500 or less, the "Market Value of Required Property" may be shown as "Nominal" on the parcel appraisal page. Districts have the authority to offer up to \$2,500, but not less than \$500 on parcels appraised as "Nominal." A minimum value offer of \$1,000 is required prior to submitting a request for a Resolution of Necessity.

The District will determine the amount to be offered prior to the first call on the owner. The determination of the amount to be offered will be a judgmental decision based on both a project basis as well as the classification (title, size, etc.) of the acquisition.

Alternately, when the compilation on the appraisal page shows a figure less than \$2,500, the offer will be that figure as a minimum, but not less than \$500. Also, see the Appraisal Chapter (Section 7.02.14.00).

#### **8.01.27.00**      **“One Call” Draft Purchase Order (DPO) Process**

Payment to grantors may be expedited by using the Draft Purchase Order (DPO) Process, when settling a low-valued transaction of \$2,500 or less, after the basis for just compensation has been established with either an approved appraisal or a Waiver Valuation. The grantor may be paid during the initial call with a DPO. The interest acquired must be \$2,500 or less, and only one DPO may be issued per parcel.

DPOs should be limited to “One Call” transactions, including payment to the grantor. However, unusual circumstances may lead to up to three calls, if necessary.

The agent must obtain a DPO from the fund custodian. The agent and the grantor must countersign the DPO. The DPO, along with the payment package, must be submitted to Right of Way Accounting within ten days of issuance of the DPO.

#### **8.01.28.00**      **Administrative Authorizations**

Administrative authorizations deal with Independent or Staff Independent Appraisal Reports. The reports are initially reviewed and analyzed by the Appraisal Branch. Thereafter, they are sent to the Acquisition Branch so the necessary authorizations for their use may be secured. Independent or Staff Independent Appraisals are authorized for use by the DDC-R/W in amounts up to \$500,000. Authorizations over \$500,000 must be approved by HQ R/W. A memorandum recommending authorization should be secured from the attorney assigned to the case in which the appraiser will testify and made part of the file.

#### **8.01.29.00**      **Administrative Settlements**

Prior to the filing of an eminent domain suit and the hiring of an independent expert witness/appraiser, property may be acquired through settlement at a payment which varies from an approved appraisal through the Administrative Settlement process. When the difference between the approved staff appraisal and proposed settlement is \$500,000 or less, the increase is considered Nonsubstantial, and it may be authorized by the DDC-R/W. When the difference between the approved staff appraisal and proposed settlement is more than \$500,000, the increase is considered Substantial. A Substantial increase requires the prior authorization of HQ R/W.

Any increase must be based on and be supported by the guidelines contained in 49 CFR 24.102(i). The final offer of compensation required by Code of Civil Procedure, Section 1250.410 (see the Condemnation Chapter) is to be made in anticipation of protecting the Department against payment of attorney’s fees and related costs. It also must be supported by the guidelines in the CFRs.

When an administrative settlement is reached on owner-occupied residential property, the RAP staff must be notified so that any necessary adjustment to the Price Differential Benefit may be determined.

Administrative settlements are to be distinguished from administrative authorizations. Administrative authorizations involve the use of Independent or Staff Independent Appraisals. Administrative settlements are based on factors other than those which are used as market value premises in the preparation of an appraisal. Administrative Settlements are not to be used in lieu of an updated appraisal report. All of the guidelines included in the CFRs are pertinent. However, the more commonly used guidelines in determining whether an administrative settlement should be made are:

- A. All available appraisals, including owner’s appraisal.
- B. Recent court awards for similar properties.

- C. Acquisition agent's recorded information.
- D. Range of probable testimony in trial. (Trial Risks)
- E. Opinion of legal counsel, where applicable.
- F. Trial cost when considered with other information.

Requests for approvals of Substantial administrative settlements are to be submitted to the Acquisition Section of HQ R/W utilizing Exhibit 8-EX-50. A supporting memorandum or documentation (legal memorandum, where applicable) is to be attached as necessary. If time does not permit a memorandum, the form may be faxed for conditional telephone approval. Approval may take the form of a range of acceptable values. When settlement on conditional approvals is made, the District must submit a memorandum as discussed above, or a confirming memorandum containing the justifying details within 10 to 15 working days. Approved administrative settlements are to be incorporated into the Memorandum of Settlement.

Exhibit 8-EX-50 may be used to justify and/or approve Nonsubstantial administrative settlements.

#### **8.01.29.01**      **Legal Settlement Recommendations**

- A. Once an Eminent Domain Suit has been filed, an Expert Witness has been hired, AND a settlement that exceeds the amount of the approved staff appraisal is proposed based upon new appraisal data from said witness, the settlement will be considered a LEGAL SETTLEMENT subject to the requirements of 23 CFR 710.105 and 710.203 and Department procedures pertaining to a LEGAL SETTLEMENT. All LEGAL SETTLEMENT recommendation memoranda shall be written by the attorney assigned to the case. All Substantial LEGAL SETTLEMENTS are approved by HQ R/W and are not delegated. The Regions/Districts are authorized to approve Nonsubstantial LEGAL SETTLEMENTS (see Section 8.01.29.00 for definition of Substantial vs. Nonsubstantial administrative and legal settlements).

In processing payment for LEGAL SETTLEMENTS, the Attorney's Legal Settlement Memo must be received and approved prior to the actual disbursement of any funds. However, as an expedient, issuance of a check by Accounting (Form RW 9-20) should be requested as soon as settlement is confirmed.

- B. All other settlements that exceed the amount of the approved staff appraisal will be considered ADMINISTRATIVE SETTLEMENTS and subject to the requirements of 49 CFR 24.102(i) and Department procedures pertaining to an ADMINISTRATIVE SETTLEMENT.
- C. Additional information regarding delegated authority for Administrative/Legal Settlement can be found at the following Intranet site (for Department use only):  
<http://pd.dot.ca.gov/row/offices/acquisition/memos/>.

#### **8.01.30.00**      **Easements in Limited Vertical Dimension**

The Department may acquire easements in limited vertical dimension (aerial easement). Typically, this occurs when a proposed structure passes over land on which the surface use is to continue. The conveying document will contain conditions which limit, for safety or other reason, the uses to which the property under the structure may be put or the present use continued. (See Forms RW 6-1[X] and RW 6-1[Y].) The legal description attached to a Notice of Intent advising owners of our intention to secure a Resolution of Necessity must contain all of the limiting conditions.

#### **8.01.31.00**      **State Rental of Residential or Commercial Units Prior to Acquisition**

Current practice in the Relocation Assistance Program allows the payment of benefits to qualified rental displacees as soon as the initiation of negotiations, or settlement, has been made to the property owner. When the displacee vacates the property pursuant to such a payment but prior to acquisition of the property by the State, acquisition problems may be created. During the period that negotiations are underway, the property owner may feel it necessary to re-rent the property to provide an income stream, sometimes at lower than market rental rates. This can leave the State with additional relocation assistance payment costs and work that can delay project delivery.

In certain circumstances, vacant residential or nonresidential units may be rented by the State prior to acquisition to keep the units vacant and thus to expedite project delivery and minimize relocation assistance costs. This procedure is especially useful in regard to multiresidential properties, mobile home spaces, ministorage units and similar properties.

Districts are encouraged to use the provisions of this section when anticipated savings will be substantial and/or when project delivery schedules indicate it will be necessary. When it is clear that units should be rented under the provisions of this section but for some reason this cannot be accomplished, consider obtaining an early Order for Possession.

#### **8.01.31.01**      **Arranging for Pre-Escrow Rentals**

Acquisition must obtain the written approval of the DDC-R/W prior to instituting this procedure on any project. This approval will also be the authorization to institute a “No Re-rent” policy after acquisition. (See the Property Management Chapter.)

An estimate of the potential relocation benefits by type of unit affected, along with other justifying material, will be prepared by RAP. It will be a part of the written authorization. It must show that using this procedure will expedite project delivery and/or minimize overall costs to the State. Consider the estimated lead time on the project and the aggregated rental cost to the State versus the estimated relocation expenses which could be incurred if the units were not rented by the State.

#### **8.01.31.02**      **Initiating Rental Agreement**

Districts will offer to enter into rental agreements concurrently with initiation of negotiations in cases where pre-escrow rents are approved. This procedure should also be applied where master tenants are operating properties such as mobile home parks under leases with the owners.

The Rental Agreement format set forth in Exhibit 8-EX-4 will be used. It will be prepared in advance of the first call and presented to the property owner(s) with the other acquisition documents when initiation of negotiations is made. Payment of rents may be set up in the rental agreement in two ways:

- A. Accumulation of rents owed during the rental period, and payment at close of escrow.
- B. Periodic payments during the rental period. This provision will normally be used when the fiscal condition of the property owner is such that a single delayed payment at close of escrow is not acceptable.

The existing rent schedule for the units shall be continued. If there is no existing schedule, the rental amount shall be set by the Appraisal or Property Management Branch.

### **8.01.31.03**      **Paying and Accounting for Pre-Escrow Rents**

These rental payments are considered to be acquisition costs, not relocation assistance costs. FHWA participates in these costs, provided they are properly documented and billed. Payments made prior to acquisition may be expedited by completing the Acquisition Invoice (Form RW 8-17) and attaching the documents listed on the form. Allow 30 days for processing payments. The rental agreement must provide for proration of rents that are paid/owed at close of escrow.

A copy of Form RW 8-17, with the attachments, will be placed in each parcel file for which rental payments have been made. It will be included as an attachment to the MOS. Districts should minimize the rental period by allowing for a reasonable negotiation period and then initiating the condemnation process.

Schedules for payment of pre-escrow rent (payment packages) are submitted to District Planning and Management offices.

Pre-escrow rent transactions are considered administrative settlements. The MOS and Federal Participation Memorandum (Form RW 8-16) must reflect the full cost of acquisition including all pre-escrow rents. The total amount of pre-escrow rents is entered on the 'Rent' line of Form RW 8-16. The Federal Participation Memorandum Form should not reflect the schedules for pre-escrow rent payments made prior to close of escrow. Therefore, the amount of pre-escrow rents paid should be entered on the 'Other' line in parenthesis to indicate to R/W Accounting to subtract that amount. A full explanation of pre-escrow rent aspects of the transaction must be included in the MOS.

Where rental payments are made in advance of escrow, a tabulation of all payments made, by amount and date, will be maintained in the parcel file. A copy of this tabulation will be included in the MOS as page 3A—Recapitulation of Pre-escrow Rents.

Schedule packages for pre-escrow rents to be paid prior to the close of escrow will be reviewed in the same manner as other schedule packages. After the schedule is forwarded to Accounting for payment, the supporting documents and a copy of the schedule will be maintained in the parcel file and accumulated as periodic payments are made. When the acquisition payment package is forwarded, the accumulated materials will be used in the review to ensure that the MOS and Federal Participation Memorandum include all pre-escrow rent payments made.

### **8.01.32.00**      **Acquisition Offers and Relocation Assistance Benefits on Parcels for Projects Not Funded**

All offers for acquisition of rights of way and relocation assistance benefits on projects not supported by budgeted funds should be withdrawn. This does not refer to offers on parcels which have been approved as hardship or protection.

Sample letters to be used for the withdrawal of offers from owners and, when applicable, tenants occupying such properties are included as Exhibits 8-EX-9, 8-EX-10, and 8-EX-11. The sample letters refer to the right to appeal the withdrawal of relocation benefits. Such appeal will be to the Relocation Assistance Program Appeals Board in Sacramento. An application to reinstate an acquisition offer should be directed to HQ R/W.

#### **8.01.33.00**      **Filing of Right of Way Contracts and Other Papers in Official Files**

All correspondence, memoranda and other papers or data relating to a particular right of way transaction shall be placed in the proper official office file for such transaction. This shall also include executed but unapproved contracts which have been superseded by new contracts. Where a project has a Federal Aid Project Number, the contract, deed and all other documents and correspondence in the parcel file must have the project number listed thereon.

#### **8.01.34.00**      **Review of Acquisition Parcel Files**

The Regions/Districts are responsible for ensuring compliance with Federal, State, and Departmental policies and procedures. Review of Acquisition parcel files is the responsibility of the District Senior. The Senior may use the acquisition checklist (Exhibit 8-EX-12) as a guide to the items which are the most sensitive. The checklist is not intended to include all items which may be the subject of a review.

#### **8.01.35.00**      **Reimbursement of Litigation and Transfer of Title Expenses - Appeal Process**

Federal regulations require that property owners be reimbursed for expenses incidental to the transfer of property as well as specified litigation expenses. These are enumerated in 49 CFR 24.106 and 24.107. FHWA also requires that property owner have an appeal process available if reimbursement or direct payment by the State is unavailable. The expenses listed under 24.106(a) are paid by the State as part of our normal process. The Code of Civil Procedure, Section 1265.240, prohibits the State from paying the expenses listed in 24.106(b). A procedure is in place for reimbursement of expenses listed in 24.106(c). Those listed in 24.107(a), (b), and (c) are paid at the direction of a court order. There does not appear to be an area under which owners would have expenses borne by themselves. However, property owners shall be advised that if they have incurred any of the expenses listed for which they have not been reimbursed, they have the right to appeal to the Director of the Department for reimbursement. To qualify for reimbursement, such expenses must have actually been incurred, be reasonable, and not at the option of the owner.

#### **8.01.36.00**      **Hazardous Waste**

It is the *policy* of the Department, in the development of transportation projects, to fully consider all potential aspects of hazardous waste (HW) sites. Where one is involved, we must ensure that adequate protection is afforded employees, workers, and the public both during and after construction. See Section 8.16.00.00 for a complete discussion on how Acquisition is to handle Hazardous Waste and Hazardous Materials. See Section 7.04.12.00, et seq., for Appraisals' involvement.

It is the Department's policy to not pay for the cleanup of HW generated by other responsible parties. Any property known or suspected to be contaminated with HW will not be acquired or possession taken until:

- A. The suspected site has been sufficiently investigated to the point of providing a reasonable assurance that no significant problem exists; or
- B. The confirmed site has been cleaned up by the responsible party prior to possession by the Department;  
or

- C. A determination has been made that the HW will cause no impediment to the construction of the proposed project or to the anticipated subsequent use by the Department and the public; or
- D. The estimated cost of the cleanup has been reflected in the appraisal and acquisition process in those cases where the Department will do the cleanup work.

Exceptions to this policy must follow the approval process outlined in Section 8.16.01.02, and be approved by the Deputy Director, Project Development and the Deputy Director, Planning.

A material is hazardous if it poses a threat to human health or the environment. A hazardous material has one or more of the following general characteristics:

- A. flammable
- B. corrosive
- C. toxic
- D. reactive (subject to spontaneous combustion)

Hazardous material becomes hazardous waste when no longer of use and is to be discarded.

**NOTES:**



## **8.02.00.00 - APPRAISAL SUMMARY STATEMENTS AND VALUATION SUMMARY STATEMENTS**

### **8.02.01.00      General**

Appraisal Summary Statements and Valuation Summary Statements consist of a form and transmittal letter. The letter describes certain legal rights of the owner and lessees having a compensable interest in the property being acquired. The form sets out some specific financial data relative to land, improvements and damages.

All owners and tenants having a cumulative compensable interest of \$10,000 or more in land, buildings, structures, other improvements located on the real property to be acquired, must receive both an Appraisal Summary Statement (Exhibit 8-EX-15A) and Summary Statement Relating to the Purchase of Real Property or an Interest Therein (Exhibit 8-EX-16) on the first acquisition call when price is discussed [49 CFR 24.102(e)].

All owners and lessees having a compensable interest in land, buildings, structures, other improvements, or a business located on the real property to be acquired, must also receive both an Appraisal Summary Statement and Summary Statement Relating to the Purchase of Real Property or an Interest Therein, or if the parcel is valued using a Waiver Valuation, then both a Valuation Summary Statement (Exhibit 8-EX-15C) and Summary Statement Relating to the Purchase of Real Property or an Interest Therein must be provided on the first acquisition call when price is discussed.

The Summary Statement Relating to the Purchase of Real Property or an Interest Therein shall be modified depending on whether an Appraisal Summary Statement or Valuation Summary Statement is utilized. When an Appraisal Summary Statement is used, item 4 of Exhibit 8-EX-16 will refer to the "Appraisal Summary Statement." When using the Valuation Summary Statement, item 4 of Exhibit 8-EX-16 will refer to the "Valuation Summary Statement," and the word "valuation" should appear in items 4.a. and 4.b. (Reference shall be made to Guideline Memorandum dated June 4, 2002 regarding Appraisal Summary Statements and Valuation Summary Statements.)

Appraisal and Appraisal Summary Statements must be prepared and the offer made prior to proceeding with a condemnation action.

Exhibit 8-EX-15B covers "Loss of Goodwill." Depending on whether or not this "Loss" has been appraised will determine which statement needs to be checked.

When a Loss of Goodwill appraisal report is either approved or authorized, a statement indicating the amount of the loss shall be delivered at the time of initiation of negotiations for such loss. While a "business" is not an interest in real property, the Summary Statement Relating to the Purchase of Real Property or an Interest Therein shall be delivered to cover other aspects of the acquisition. In some instances, consultation with the Legal Division may be advisable prior to offering the amount of the Loss of Goodwill Appraisal.

### **8.02.02.00**      **Statement Types**

Appraisal Summary Statements are to be used for appraisal reports only, whether full narrative or memorandum format. When an appraisal report was not prepared or when a Waiver Valuation was prepared, then the Valuation Summary Statement must be used. All Appraisal Summary Statements for the purchase of real property, or interest therein, are to be on a single basic form (Exhibit 8-EX-15A) with the data provided varying dependent upon the type of property and the appraisal approaches utilized. If lessees or other interest(s) are involved, they are to be appropriately identified in the space provided for "Owner."

**NOTE:** Federal regulations require that the Summary Statement identify any separately held ownership interest in the property, such as a tenant-owned improvement, and indicate that such interest is not covered by the offer. In such cases, appropriate information is to be added in the space available at the bottom of page 3 of Exhibit 8-EX-15A, and the bottom of page 1 of Exhibit 8-EX-15C.

All Valuation Summary Statements for the purchase of real property or interest therein, valued at \$10,000 or less, using a Waiver Valuation or other non-appraisal process, are to be on a single basic form (Exhibit 8-EX-15C) with the data provided varying dependent upon the type of property, and the valuation approaches utilized. If lessees or other interest(s) are involved, they are to be appropriately identified in the space provided for "Owner."

The Appraisal Summary Statement (Exhibit 8-EX-15A) and Valuation Summary Statement (Exhibit 8-EX-15C) shall also include a mandatory paragraph entitled "Summary of the Basis for Just Compensation" (see Sections 7.02.03.00 M., 7.02.12.00, and 7.02.13.00).

This paragraph prepared by the appraiser is to be included verbatim by the acquisition agent following item 3, under the "Basis of Valuation" section of the summary statement.

Exhibit 8-EX-15B is for Loss of Goodwill Appraisal Summary Statements.

### **8.02.03.00**      **Lessee's Interest**

At the initiation of acquisition discussions for an ownership which is subject to a lease, and prior to making any offer, the Acquisition Agent will confirm the ownership of the improvements as between the parties with an offset statement. (See Section 8.04.15.00 and Exhibits 8-EX-18A and 8-EX-18B.)

Determination of compensation to be paid for any improvements shall be as a part of the real property to be acquired. This is notwithstanding the obligation of the tenant to remove any improvements at the expiration of the lease.

Separate Appraisal Summary Statements or Valuation Summary Statements and Right of Way Contracts will be delivered to the lessor and lessee at the time initiation of negotiations are made. Sections 8.04.15.00 and 8.04.16.00 must be reviewed prior to preparing summary statements.

Each summary statement in a Lessor/Lessee Acquisition will indicate which improvement, machinery, equipment or improvements pertaining to the realty is claimed or owned by each of the parties.

**8.02.04.00**      **Revised Offers**

When the appraisal or Waiver Valuation is revised, the owner and/or lessee will be provided with a new Appraisal Summary Statement or Valuation Summary Statement, reflecting the revised appraisal or Waiver Valuation.

**8.02.05.00**      **Independent Appraisals or Staff Condemnation Reports**

Independent appraisals, whether prepared by staff condemnation agents or independent appraisers, are obtained for litigation purposes. These are privileged, and new Appraisal Summary Statements will not be required. An exception is an independent report secured in lieu of a staff report.

**8.02.06.00**      **Owner-Occupant's Right to Review Appraisal**

Since an owner-occupant of a residentially improved property containing four units or less has the right to review the State's appraisal, the following clause will be included in the Appraisal Summary Statement under the "Improvement" heading:

"An owner-occupant of a residential property containing four units or less, has a right to review the appraisal on which the written offer to purchase is based."

The Acquisition Agent must orally inform the owner-occupant of the right to review the appraisal and make a diary entry when that has been done. This does not preclude giving a copy of the approved appraisal to a qualified owner. The District shall have the option of providing a copy at the time of initiation of negotiations. See Section 8.01.12.00 for the conditions under which an appraisal may be reviewed by an owner-occupant qualified to do so under Government Code Section 7267.2.

## **NOTES:**

## **8.03.00.00 - RIGHT OF WAY CONTRACTS AND CONTRACT APPROVALS**

### **8.03.01.00**      **Form of Right of Way Contracts**

Right of way transactions are usually completed through use of the approved form, appropriate insert sheets and approved clauses. (Forms RW 8-3 through RW 8-5.)

Special agreements with other public agencies, railroads, etc., may require the use of a special form in lieu of a Right of Way Contract.

All Contracts should consist of standardized clauses, primarily. Most aspects of acquisition are covered by use of the appropriate standard clauses.

The wording of the clauses should not be altered unless absolutely necessary. If situations arise which require modification of these clauses or use of special clauses, the Memorandum of Settlement (MOS) will explain and justify the special wording. A minimum of two signed copies of the Contract shall be secured from the grantor.

Revisions, deletions, additions, or attachments to the Contract shall be initialed by the grantor(s) and the Agent.

### **8.03.02.00**      **Contract Obligations**

The Contract must include all the terms and conditions mutually agreed upon and reflect a complete agreement on all matters involved in the acquisition. No obligation other than those set forth in the Contract will be recognized and the performance of those terms and conditions relieves the State of all other obligations or claims.

The State can enter into a contractual obligation involving a contingency occurring more than three years after acceptance of the Contract only in exceptional cases.

### **8.03.03.00**      **Amendments to Right of Way Contracts**

Changes required by either the State or State's grantors may require revision of portions of approved contracts. Such revisions are to be accomplished by an amendment to the Contract. The format for an amendment is shown as Exhibit 8-EX-19.

### **8.03.04.00**      **Canceling or Superseding Signed Right of Way Contract**

A signed Contract (regardless of approval status) may be superseded or canceled and returned to the grantor only with the written consent of the DDC-R/W or Supervising Agent in charge of the Acquisition Branch. If the Contract has been scheduled for payment, a letter with reference to the appropriate schedule number should be sent to the title company informing them that the State's warrant should be returned to the Disbursing Officer in Sacramento. The District should advise HQ R/W that the Contract has been canceled or superseded and the title company has been instructed to return the warrant. This procedure applies only to those cases where the Contracts are being canceled and superseded and not to Contracts to be amended.

Where an entirely new Contract is being substituted for a prior Contract, the following clause is to be used.

“This Right of Way Contract shall supersede, cancel, and void all terms and conditions of that certain Right of Way Contract heretofore entered into between the parties hereto on (date).”

**8.03.05.00**      **Acquisition From an Employee of the Business and Transportation Agency**

Where the grantor is an employee of the Agency, the Agent, in preparing the Contract, shall make a notation immediately after the grantor's name indicating Civil Service Title and place of employment, e.g.:

John Doe  
Senior Right of Way Agent  
District 13  
Department of Transportation

**8.03.06.00**      **Payment Clauses**

The standard Contract contains a printed payment clause. There are a number of different situations which may require specialized payment clauses. A series of specialized clauses are in Section 8.05.00.00 under .04, .05, .09, .10, .11, and .13.

**8.03.07.00**      **Contracts Which Require Approval by HQ R/W**

There are three specific transactions which require HQ R/W approval. They are:

- Nonstandard railroad indentures.
- A commitment by the State to acquire private property for private use.
- Exchange of noncontiguous excess land.

A Transmittal memo must accompany the contract submitted to HQ R/W for approval, providing background data on the transaction.

**8.03.08.00**      **Contracts Approved by District Office of Right of Way**

The District may approve all Contracts with the exception of those specifically requiring HQ R/W approval as listed above and listed in the current District delegations. Prior to acceptance of the Contract on behalf of the State, one copy of the signed Contract must be certified as to availability of funds by the Division of Accounting.

The MOS and signed Contracts, including the one certified by the Division of Accounting, shall be processed for acceptance as follows:

- A. For parcels with less than \$10,000 cash to grantor, the MOS shall be recommended for approval by the Acquisition Agent and approved by that agent's Senior. The same Senior will approve the Contract by signing, on behalf of the State, both copies of the Contract previously signed by the grantor. Parcels which would otherwise qualify under this provision except that a nonsubstantial administrative settlement has pushed that cash to grantor to over \$10,000 can be processed in the same way; however, the administrative settlement must be approved in accordance with the provisions of Manual Section 8.01.29.00.

B. For parcels with more than \$10,000 cash to grantor:

1. The MOS shall be recommended for approval by the Acquisition Agent and the Senior Agent Acquisition Branch.
2. If the Contract meets all of the criteria set forth above, the Supervising Agent for Acquisition or the DDC-R/W will approve the Contract by signing, on behalf of the state, both copies of the Contract previously signed by the grantor.

These are the minimums required and no further delegations should be made. Any District Director may wish to retain the right to accept the Contract on behalf of the State. An executed copy of the Contract is mailed or delivered to the grantor after acceptance.

A signed copy of the MOS and a reproduced or conformed copy of the Contract will be forwarded with the schedule package to the Division of Accounting. Scheduling procedures may be initiated as soon as the Contract has been accepted by the district.

## **NOTES:**



## **8.04.00.00 - TITLE EXCEPTIONS**

### **8.04.01.00      General**

Normally, a preliminary title report is obtained on every property to be acquired. There are instances, however, where no report will be obtained or just a "Statement of Ownership" will be obtained. Then, it is incumbent on the Appraiser and the Acquisition Agent to examine the county records to determine the condition of title. This would include vesting information, liens, encumbrances, easement, covenants, conditions and restrictions, leases, reservations, taxes, assessments, bonds, trust deeds, mortgages, contracts of sale and bonds. Every effort to secure clear title for the State must be made. Items which cannot be cleared will have to be taken subject to in the Contract.

The preliminary title report must be analyzed to determine which exceptions will be cleared and which will remain and title to be taken subject to the encumbrance. All encumbrances which will appear as exceptions in State's policy of title insurance must be included in the Contract in sufficient detail to be readily and adequately identified. Those involving the public record should include the appropriate book and page or date and instrument number.

Since the property owner will be obligated to deliver title to the State as specified in the Contract, liens and encumbrances not listed must be cleared before payment is made. The Acquisition Agent should assist the property owner in clearing title of such liens and encumbrances.

If an encumbrance affects a portion of the grantor's land other than that being acquired by the State and it cannot be eliminated, the encumbrance must be shown in the Contract and proper explanation included in the MOS.

All encumbrances adverse to State's title must be cleared unless adequate reason clearly justifies taking title subject to such encumbrances. Consider both the actual and potential effect of each exception on State's title. Any title encumbrance or subordinate interest to be cleared by separate Contract must be taken subject to in the Contract with the fee owner. This will provide a basis for clearance of the encumbrance or interest as a separate transaction even though the separate transaction is being processed concurrently with the parent transaction.

### **8.04.02.00      Clearance of Unrecorded Interests**

The standard form of title insurance policy insures the title to the property predicated on matters disclosed only by the public records. The Acquisition Agent must assume full responsibility and do those things necessary for protecting the State against loss due to any matters affecting the title which do not appear of record.

The law provides that a buyer is bound by the constructive notice afforded by the public records and such notice to which buyer is exposed. A purchaser is deemed to have notice of such interests as would be disclosed by an investigation of ground conditions. Some items which inspection of the property should disclose are:

- Parties in possession under an unrecorded deed or contract of purchase;
- Community driveways, pole lines, pipe lines, irrigation ditches, or roadways indicating easements or rights of way which do not show in the title report;
- Streams, lakes, rivers, or oceans which may affect boundaries;
- Overlapping or encroaching improvements;
- Violations of restrictions or zoning ordinances.

Although the title company normally insures against loss sustained by reason of a forgery, the only precaution they ordinarily take to justify such insurance is the requirement of a statement of identity from the grantor. A policy of title insurance insures the State against loss sustained by reason of a forgery only to the amount of the insurance.

#### **8.04.03.00**      **Instruments to Clear Title**

Standard right of way forms should be used to clear or eliminate interests affecting title. If there is no standard form, ask the title company for an acceptable instrument. If State's grantor agrees to clear a subordinate interest, the instrument may be in favor of such grantor rather than the State. The Contract shall specifically obligate grantor to eliminate such interest at grantor's sole cost and expense.

Whenever a subordinate interest is cleared by Quitclaim Deed in favor of State and no payment is to be made to the interest holder, the District will insert the following words:

“without any demand for monetary or other consideration” immediately after the printed words,

“do hereby release and quitclaim to the State of California” as stated in the preamble of Quitclaim Deed forms.

#### **8.04.04.00**      **Grantor's Indemnification**

Where the State is acquiring title subject to exceptions of a questionable nature, the appropriate indemnification clause must be in the Contract. The MOS must contain sufficient information supporting the acceptance of title subject to defects and imperfections. If the exception is specifically listed under Paragraph (A) of the Contract, use Clause 01, otherwise use Clause 02.

- A. “In consideration of the State's waiving the defects and imperfections in the record title, as set forth in Paragraph 2(a), the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract.”
- B. “In consideration of the State's waiving the defects and imperfections in all matters of record title, the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract.”

See also Section 8.01.02.09 (Government Code Section 14662.5).

#### **8.04.05.00**      **Covenants, Conditions and Restrictions**

Title may be taken subject to the conventional, general, or individual type of tract restrictions, provided the nature and effect are known and considered. Unusual covenants or conditions which restrict land for a specific use, such as park purposes, school purposes, railroads, etc., shall be considered particularly as to a possible forfeiture of title upon breach or violation. Conveyances to clear such reversionary interests should be secured as necessary.

#### **8.04.06.00**      **Easements - General**

All easements are to be considered as to both the present and future effect on property being acquired. The location of the easement in relation to the part taken is to be determined prior to preparation of the Contract. If an easement constitutes a present or future adverse interest in the part taken, it should be eliminated by appropriate instrument prior to scheduling if possible. Where the nature of the easement does not warrant the cost in time and effort to eliminate, it should be handled in conformance with Sections 8.04.01.00 and 8.04.04.00.

#### **8.04.07.00**      **Easements - Gross or Appurtenant**

All easements in favor of third parties for personal or business use, such as driveways, roads or pipelines, whether in gross or appurtenant, should be cleared prior to scheduling. If payment is to be made to clear an easement, this must be taken into consideration in the transaction with the fee owner. This clearance should be done concurrently with the fee acquisition.

Elimination of easements in gross which can be arranged through one transaction covering the entire project may be delayed if it is advantageous from the standpoint of efficiency or expediency.

The effect and intended disposition of such easements must be reported both in the MOS and schedule letter. It is incumbent on the DDC-R/W to see that all such easements are satisfactorily cleared prior to certifying the project for construction.

Interests not cleared prior to the close of escrow must appear as an exception in the Contract since they will also appear as exceptions in the Policy.

#### **8.04.08.00**      **Easements - Blanket**

The interest of easement holders in so-called "blanket" or "floating" easements should be cleared if the choice of location has been exercised. Such easements affect title to the entire property and will be shown as encumbrances in title policies unless eliminated by proper conveyance. Title Company agreements to eliminate such easements should be in writing and the information included in the schedule letter and escrow instructions.

#### **8.04.09.00**      **Easements - Obsolete**

Easements or rights that are discovered by either observation or inquiry to be obsolete, abandoned, extinct and of no present or future adverse effect are nonetheless to be listed in the Contract and a brief but adequate explanation included in the MOS.

#### **8.04.10.00**      **Utility Easements**

Public or private utility easements may or may not have a facility located (overhead, surface or underground) therein. Clearance or elimination of these facilities from the right of way being acquired will be the responsibility of the Acquisition and/or the Utility Relocation Branch.

The elimination of a private easement and clearance of any facility located therein is the responsibility of the Acquisition Agent. This is usually done by Quitclaim Deed with an obligation in the Right of Way Contract to secure a replacement easement, if necessary. Relocation (i.e., an irrigation pipeline) may be provided for by payment in the Contract. If the facility is to be removed and use discontinued, it may be desirable to have removal by the road contractor. Relocation of a private facility may be handled by or with the assistance of the Utility Relocation Branch.

If the easement is public (easement in gross), first determine whether a facility exists within the easement. Visual inspection should suffice for surface and overhead facilities. The Utility Coordinator must consult with the vestee of the easement to assure that no other facility exists in the area.

The Acquisition Agent and the District Utility Coordinator must jointly determine whether to take title subject to the easement where no facility exists. The utility company may have plans to use the easement for a future facility. Taking title subject to the easement will thus create a situation in which additional costs will have to be borne by the State. The Utility Coordinator should enter into an agreement with the company recognizing such future use.

The Acquisition Agent cannot assume that when a public utility easement exists on property to be acquired, the disposition of such easement is the sole responsibility of the Utility Coordinator. The Utility Coordinator must be advised of the existence of any easement without a facility, including its dimensions, so that a reasonable determination may be made whether to take title subject to the easement or if discussions between the utility company and Utility Coordinator are necessary.

The District Utility Coordinator will arrange for relocation of all facilities installed in public utility easements. The substitute easement will be acquired either by the company or the Department at the request of the company. If acquired by the Department, the location shall be agreeable to the company. This replacement area is subject to the same controls and clearances that apply to regular highway rights of way, including hazardous waste clearances.

Acquisition of right of way from a utility company involves a variety of approaches, i.e., fee or easement; vacant, site or corridor; improved site or corridor; replacement right of way; and consent to condemnation for exchange.

The Acquisition Agent should be thoroughly knowledgeable with the procedures involved in acquiring right of way from a utility company. Reviewing appropriate sections of the Utility Procedure Chapter will provide insight. Discussions with the District Utility Coordinator are essential.

#### **8.04.11.00      Judgments, Attachments, Mechanics' Liens, Etc.**

Appropriate releases or satisfactions of all such exceptions are to be secured and filed or recorded. Quitclaim deeds are not effective in eliminating such liens. Refer to the Titleman's Handbook and discuss these matters with the title company to determine the proper procedures.

#### **8.04.12.00      Release of Liens Under Unemployment Insurance Act**

- A. A release of lien shall be requested by letter addressed to the Employment Development Department (EDD), Attention: Tax and Collection Section, 800 Capitol Mall, Sacramento, California 95814. The letter shall contain the reason for the request, the legal description of the property and the amount of the consideration. A copy of the title report and the escrow instructions shall be attached to the letter.
- B. Tax Collection Section (EDD) will forward a demand for the delinquent amount to the escrow company handling the transaction. After satisfaction, a release of lien will be recorded in the county in which the lien was recorded.
- C. When it is necessary to condemn land encumbered by lien(s) of the EDD, the District shall, prior to filing the complaint, forward a letter to the Chief, Tax Collection Section, at the above address informing of our proposed condemnation action. The letter shall indicate the legal description and appraised value of the land and include a copy of the title report. The Chief, Tax Collection Section, will immediately determine EDD's interest in the land, if any, and telephone the Agent with the results of such determination. This procedure should eliminate naming EDD a defendant in any condemnation action.

#### **8.04.13.00**      **Court Actions**

Title may be taken subject to the State's pending condemnation action. Elimination of other court actions is generally required.

#### **8.04.14.00**      **Consent to Dismissal and Deposit Waiver**

In all instances involving right of way on which the State has filed a condemnation suit, *it is imperative that the dismissal clause be included in the Right of Way Contract.*

#### **8.04.14.01**      **Dismissal Clause**

"The undersigned Grantor(s) hereby agree(s) and consent(s) to the dismissal of any eminent domain action in the Superior Court wherein the herein described land is included and also waive(s) any and all claims to any money that may now be on deposit in said action."

#### **8.04.15.00**      **Negotiating Clearance of Lessee Interests**

The interest of a lessee or other legal occupant, e.g., tenant, is cleared through either a Quitclaim Deed running to the lessor or to the State or through the eminent domain process. Leases that are in effect must either be eliminated or assigned to the State. If they appear in preliminary title reports as exceptions but are no longer in effect, they will be eliminated if possible. Title companies will generally disregard a lease which is no longer in effect on receipt of conclusive evidence. This type of evidence is usually provided by the owner of the property. An explanation and justification must be included in the MOS on any lease that is impossible to eliminate will be listed as an exception in the Contract.

When the State must take assignment of the lease, the Agent shall obtain "Lessee Offset Statement" signed by the lessee. This sets forth the pertinent facts of rental payments made to the lessor, credits the lessee claims, if any, etc. (a sample "Offset Statement" is shown as Exhibit 8-EX-18A and 8-EX-18B).

Sufficient information is to be set forth so that the State will have full knowledge of any offsets, claims or defenses under the lease that are inconsistent with those of the lessor. This information may dictate terms of the Contract or escrow instructions covering the transaction. Exhibit 8-EX-20, "Assignment of Lease-to-State," should be attached to grantor's copy of the lease and executed by grantor upon delivery of the lease to State. An Offset Statement should also be utilized to clarify ownership of realty. This would be appropriate regardless of whether the tenant is a lessee or month-to-month occupant.

Whenever there is any question as to the interpretation or intent of the conditions in a lease which is being assigned to the State, the District should submit a copy of the lease to the HQ R/W for review and advice before concluding the transaction.

A lessee may have a compensable interest in improvements which the lessee has installed on the property. The lessee must be offered the salvage value of lessee owned improvements or the value they contribute to the property, whichever is greater. This would apply provided the lease does not call for them to be owned by the lessor at the end of the lease. Agreement between the lessee and lessor as to ownership of the improvements is essential. The lessee will be given a separate offer for the improvements, provided the lessee secures a written waiver of interest from the lessor. If agreement is not reached, an unsegregated statement of value is to be made to all of the parties.

The staff appraiser will usually ascertain ownership of improvements and segregate values in the appraisal. Either the offset statement or some other written confirmation as to ownership must be secured prior to settlement. The lessee shall not be deprived of payment for improvements on the property when the State acquires the leased fee. Based on State and Federal Court cases, the State should not attempt to assume the rights of a lessor and cancel a lease to avoid payment for improvements.

Settlement of lessor/lessee interests separately is a permissible procedure. It may not be feasible without agreement between the lessor and lessee. Usually disagreement occurs over either the ownership of improvements or the existence of a bonus value in a leasehold interest. The lessee may lose the right to a bonus value because of a condemnation clause in the lease.

A lessee, in relocating a business, may prematurely vacate the premises and in so doing, give up or waive valuable rights. The Agent should ensure through early contact that the lessee is fully informed so the lessee does not inadvertently forfeit rights to compensation for relocation benefits or possible loss of goodwill.

Acquisitions which involve lessor/lessee relationships call for thorough analysis by the Agent. Such acquisitions may have variations that cannot be covered by broad or general rules. The following statements may prove helpful in minimizing difficulties with these acquisitions.

#### **8.04.15.01**      **Ownership of Improvements**

If not segregated in the appraisal, the ownership of improvements should be ascertained prior to initiation of negotiations and in any event, confirmed. If ownership cannot be resolved, an unsegregated statement of value is to be made to each of the parties. The appraisal will normally identify those improvements of which ownership is in dispute.

#### **8.04.15.02**      **Bonus Value in a Leasehold Interest**

If noted in the appraisal, the terms of the lease must be carefully reviewed. A condemnation clause in the lease could eliminate the lessee's bonus value. This situation may have to be resolved in court.

#### **8.04.15.03**      **Value of Improvements**

Lessees are entitled to the value their improvements contribute to the property or their salvage value, whichever is greater, provided the lease does not call for ownership rights to transfer to the lessor in the event of condemnation.

#### **8.04.15.04**      **Presumption of Interest**

A lessee or tenant in possession is to be presumed to have some interest in the property until the contrary is established.

#### **8.04.15.05**      **Acquiring Lessee Interest Separately**

A lessee interest may be acquired separately provided the lessor agrees in writing that the items covered in such settlement are not claimed by the lessor.

#### **8.04.15.06**      **Lessor's Right to Cancel Not Available to State**

After acquiring the leased fee from the lessor, the State shall not attempt to use any lease cancellation clause to acquire improvements at less than their salvage value or contributory value, whichever is greater.

#### **8.04.15.07**      **Premature Vacation**

A lessee should be cautioned regarding the potential consequences involved if a premature vacation of the property occurs. At or about the initiation of the appraisal process and prior to initiation of negotiations, the lessee may find it desirable to relocate. In this circumstance, the district shall advise the lessee that relocation payments cannot be made until the State has made an initiation of negotiations to acquire the property. Occupants must be made aware that they may lose RAP eligibility if they move before the initiation of negotiations.

#### **8.04.15.08**      **Bonus Value Not to Be Offered to Lessee**

If a bonus value is shown in the appraisal, the Agent is not to offer it to the lessee. Ultimately, the lessor and lessee will either agree as to its existence and value or the court will decide. The bonus value in a leasehold interest is included in the appraisal for the guidance of the Acquisition Branch and may be helpful in discussions with the owner/lessor. It may be suggested to the lessor that because of the terms of the lease, the lessee's interest may be more than a compensable interest in the improvements.

#### **8.04.15.09**      **Condemnation Clause**

A lease may contain what is commonly referred to as a "condemnation clause." This clause usually provides that in the event the property is taken under the actual or potential exercise of eminent domain, the lease shall terminate; lessee will pay prorated rent to the date of vesting or possession by condemnor; and lessee has NO claim to the compensation paid to the lessor by the condemnor. In a partial acquisition, the lease may provide the lessee with the option to terminate the lease or continue in occupancy with a proportionate reduction in rent. Since there are many variation and clauses in use, it is essential that a copy of the lease be secured for analysis. It may be appropriate for the Acquisition Senior to secure advice from the Legal Division.

#### **8.04.15.10**      **Offset Statement**

A document completed and signed by the lessor and lessee which sets forth lease information, such as length of lease, amount of rent, how rents are paid, prepaid rents or any claim for offsets for rent and ownership of improvements, shall be considered part of the realty.

#### **8.04.15.11**      **Unsegregated Statements of Value**

If the lessor and lessee are unable to agree regarding ownership of improvements on the property, then an unsegregated statement of value shall be made. The owner/lessor should be given a reasonable time in which to resolve disputes as to ownership. If there is no agreement, then parties who are to receive Appraisal Summary Statements or Valuation Summary Statements shall have an entry on the Statement that the amount set forth is the value of the required property and that the Statement has been prepared in such a manner because ownership of some part of the property has not been resolved. Care should be exercised when parties are given Appraisal Summary Statements or Valuation Summary Statements prepared in this manner. The Agent shall ensure that the parties understand the meaning and content of an unsegregated statement of value and why it is being handled in this manner.

The District, and specifically the Senior Acquisition Agent and Agent, should not hesitate to consult with the Legal Division or HQ RW at the earliest time feasible on areas not covered here or for assistance or interpretation of these guidelines.

This section has dealt primarily with the termination of the interest of an occupant of property other than the fee owner. The Agent must recognize and be fully cognizant that these occupant interests often involve leasehold interests, lessee-owned improvements, possible loss of goodwill, relocation benefits and relocation of business. The Agent should have a full understanding of the acquisition procedures as they involve relocation assistance and realize that settlements must not include a duplication of payment.

#### **8.04.16.00**      **Clearance of Adverse Interests When Acquiring Access Rights Only**

In cases involving acquisition of access rights only, relinquishments or subordinations are to be secured from all parties whose interest would be detrimental to the achievement of access control. Ordinarily, these include trustees and beneficiaries under deeds of trust; mortgages; lessees; holders of liens, the foreclosure of which would either nullify or jeopardize the rights being acquired by the State; vendees in agreements to convey; and holders of easements or rights of way of any kind whose ability to utilize and enjoy such easements or rights of way would be materially diminished or damaged by State's acquisition of access rights to the subject property.

Where clearance of a specific interest hereunder is deemed not feasible or necessary, an explanation of the circumstances and justification for nonclearance is required. (See Section 8.65.06.00 for provision for CLTA endorsement.)

#### **8.04.17.00**      **Clearance of Oil, Gas, Other Hydrocarbon and Mineral Interests in Fee Takings**

The Department does not generally acquire these interests when rights of way are being acquired in either a proven or potential bearing area. If local conditions or records indicate either actual or potential bearing land, the Deed Clause DM-4 should be included in deeds to the State describing any portion of such land. This will reserve the rights to the current holder of them.

When a fractional interest appears as an exception to the description of land to be acquired, the interest shall be shown as an exception in the deed to the State. If the owner of the land is also vested with a fractional interest and desires to retain same, the DM-4 Clause shall be included in the deed. The deed to the State should be definite as to which fractional interest is excepted from a description and which fraction is being reserved by the fee owner. A Quitclaim Deed to the surface rights and containing the DM-4 Clause is used to secure fractional interest of other than the fee owner.

A reasonable effort should be made to secure such rights. If the owner or owners cannot be located, completion of the acquisition of the required right of way need not be held up. Consider the potential risk to the State in not clearing such interest. If the risk is not material, title may be accepted by the State subject to such interests.

#### **8.04.18.00**      **Clearance of Oil, Gas, Other Hydrocarbons and Mineral Interest in Easement Takings**

In clearing these interests in easement takings, use the same procedure as in fee takings except the description in easement deeds to the State will not contain the outright exception of interests vested in the fee owner of the land. The DM-4 Clause will be used in the easement deed from the fee owner of the land.

#### **8.04.19.00**      **Clearance of Oil, Gas, Other Hydrocarbon and Mineral Leases**

When property is encumbered with a lease, a Quitclaim Deed containing the DM-4 Clause should be obtained to eliminate surface rights of lessees. Leases which endanger the present or future integrity of rights being acquired shall be cleared if the lease is active and if production of products is either present or prospective.

Community leases may not be canceled as to any portion without the consent of all parties in the lease.

If an operating well or mine is to be acquired, it will be necessary to clear all community lease interests in the facility and the surface rights to the affected portion of the leasehold by Quitclaim Deed and Contract.



If operating facilities are not affected, a Quitclaim containing the DM-4 Clause should be secured from the lessee. Such a Quitclaim Deed will not cancel the community lease of record as to the property acquired by State, but will provide evidence of lessee's consent and should be recorded.

If the lease has lapsed, either by time or by its terms, product has never been produced or operation has been abandoned, and clearance could be done only with difficulty or major expenditure of time, title may be taken subject to the effect of such lease. A full explanation of the conditions and reason for nonclearance of the lease shall be included in the MOS and schedule letter. The Contract must show that title is to be taken subject to the lease.

#### **8.04.20.00**      **Reservation for Operating Company Facilities Through Product Fields**

When the acquisition of right of way (1) through proven operating fields where the operating company has a long-term lease which specifically provides that the lessee has surface rights including installations of pipelines, power lines, etc.; or (2) where the company owns the land in fee, where the location is not a proven or potential field, use the appropriate deed clause(s) reserving company's rights. See the R/W Engineering Chapter.

These clauses shall not be used in acquiring right of way through undeveloped fields where the company owns fee title. In such areas, the product potential that may possibly exist can be developed without these reserved rights. In some instances, the lessee's rights under a lease are limited solely to the subsurface rights; therefore, before consenting to the use of these clauses, examine the terms of the lease to ascertain the extent of lessee's rights.

Where unusual conditions exist, modify the above-cited clause to reasonably fit the actual conditions.

Where the company is operating existing pipelines or other facilities pursuant to a prior right, such pipelines or other facilities shall be covered in the customary manner by joint use agreement.

#### **8.04.21.00**      **Royalty Interest**

Although royalty interests have been construed as an interest in the land itself, the multiple fractions into which royalty interests are commonly divided preclude their elimination. If deeds to the State contain our reservation clause, royalty interests may be ignored. The Contracts should show such interests as exceptions to which the State will take title.

#### **8.04.22.00**      **Reservation by Grantor**

Even though ground conditions or record title disclose no activity or exceptions, the DM-4 Clause may be inserted in the deed to the State at grantor's request.

#### **8.04.23.00**      **Real and Personal Property Taxes**

These are defined and discussed in full detail in the Titleman's Handbook. The appropriate chapters should be reviewed and the Acquisition Agent should be familiar with this information. All Contracts shall contain the statement:

“Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.”

**8.04.24.00      Tax Procedure - Acquisition of Entire Parcel**

- A. Delinquent taxes. The owner will be required to convey title free and clear of all delinquent city and county taxes. Delinquent taxes will normally be paid out of the escrow and supported by a bill from the taxing agency(ies). If the amount of the delinquent taxes exceeds the market value of the required property, the District may either:
1. Request the tax collecting agency to make the property available for sale and the District may then make a fair and reasonable bid. Or,
  2. Request the tax collecting agency to accept a partial payment of the delinquent (unpaid) taxes in an amount mutually agreed on, but not exceeding the appraised value. Remaining delinquent taxes would be transferred to the unsecured roll in accordance with Section 5090 of the Revenue and Taxation Code.
- B. Current Taxes. Sections 5085 and 5086 of the Revenue and Taxation Code provide for the payment of current taxes.
1. If title passes to the State between the lien date (first day of January) and the day prior to the beginning of the tax year, inclusive, neither the property owner nor the public entity that acquired the property is liable for taxes which, for description purposes, may be called “precurrent.” It is permissible to take title subject to “precurrent” taxes. See Section 5085 of the Revenue and Taxation Code.
  2. If title passes during the tax year (normally July 1 to June 30 inclusive), that portion of current taxes including “delinquent” current taxes and any penalties and costs allocable to the part of the tax year ending on the day before the date of apportionment shall be paid through escrow at the close of escrow or from the award in eminent domain. If any of the current taxes are unpaid for any reason, they shall be transferred to the unsecured roll and are collectible from either the person from whom the property was acquired or the public entity that acquired the property.
- Current taxes, penalties and costs allocable to the part of the tax year that begins on the date of the apportionment shall be canceled and are not collectible either from the person from whom the property was acquired or from the public entity that acquired the property.
- C. Refund of Prepaid Taxes. Section 5096.7 of the Revenue and Taxation Code requires the taxing agency to refund any prepaid taxes in excess of the prorated amount due for the portion of the tax year prior to acquisition.
- D. Procedure with Tax Collecting Agencies and Escrow Agent. Unpaid taxes which have been transferred to the unsecured roll are not the responsibility of the acquiring agency if timely written notice was given the tax collecting agency that funds are available for the payment of such taxes in an escrow or out of an award in eminent domain.

The District should notify the tax collecting agency of the impending purchase concurrently with sending the escrow letter. If any taxes are due and payable, a demand should be submitted to the escrow agent by the tax collecting agency. The escrow letter should advise the escrow agent there may be a demand for unpaid taxes and such demand is to be honored. The tax collecting agency should be notified that escrow is anticipated to close on or about a certain date.

#### **8.04.25.00**      **Disposition of Taxes, Assessments, Bonds-Acquisition of Access Rights Only**

If the acquisition is limited to access rights, it must be determined whether nonpayment of taxes, assessments or bonds would involve a risk of loss to the State.

Payment of either taxes, assessments or bonds is generally not required if the compensation is nonsubstantial. If the compensation is substantial, taxes, assessments and bonds are to be paid. Latitude is permitted as long as the interest of the State in the acquired access rights has been considered and protected. Cancellation or segregation of taxes on an access only acquisition is not required.

#### **8.04.26.00**      **Tax Procedure - Partial Acquisitions**

- A. Delinquent Taxes. Unpaid or delinquent taxes should, in nearly all cases, be paid out of escrow or by the owner separately from, but prior to close of escrow. The owner must be required to convey title free and clear of all delinquent city and county taxes except in those rare cases in which we would take title subject to delinquent taxes.

The following clause is to be included in all Contracts for clearance of delinquent taxes after the phrase "The State shall"

"Have the authority to deduct and pay from the amount shown in clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due for any year except the tax year in which this escrow closes, together with penalties and interest thereon and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow."

This clause gives the State an option to have delinquent taxes from prior years paid from the escrow proceeds. This may not always be possible where the unpaid taxes exceed the payment to be made for the property.

Title may be taken subject to delinquent taxes if the acquisition involves a small portion of a large holding and the remaining property is obviously adequate security for the tax lien.

- B. Current Taxes. Taxes for the tax year in which the escrow closes shall be cleared and paid in accordance with Article 5, commencing with Section 5081 of the Revenue and Taxation Code. This includes a request by State to the tax collecting agency for segregation of taxes and providing the segregation request to the escrow agent.

When a permanent easement is acquired in lieu of fee and as a partial acquisition, it will be in order to take title subject to current taxes.

The Contract on acquisitions handled through an internal escrow should provide for payment of taxes if the tax collecting agency has indicated they will segregate and make a demand.

#### **8.04.27.00**      **State Inheritance Taxes**

Effective June 9, 1982, Inheritance taxes were eliminated through the initiative process. The following instructions apply only to any tax liability prior to that date. The District should cooperate with and advise the State Controller's Office of the acquisition and proposed payment where there is a recorded lien. If the tax is only a possible lien, the Acquisition Agent should assist the grantor in preparing the appropriate Inheritance Tax Declaration Form obtained from the State Controller's Office, Inheritance and Gift Tax Division.

**8.04.28.00**      **Federal Estate and Gift Taxes**

Title may be taken subject to Federal Estate and Gift Taxes.

**8.04.29.00**      **Federal Income and State Income Taxes or Sales Tax Liens**

Federal income tax liens must be paid by the grantor prior to close of escrow. On partial acquisitions, a partial release of tax lien should be secured covering the property being acquired. For details, contact the nearest office of the Internal Revenue Service.

**8.04.30.00**      **Disposition of Assessments on Entire Acquisitions**

All special assessments, such as irrigation district, water conservation district, drainage district, sanitary and lighting district, etc., shall be paid in full including any future and as yet unpaid installments owed by grantors. If the assessments are for the next tax year only, title may be taken subject to such assessments if the District has the reassurance of the assessment-levying body that our request for cancellation of such assessments will be honored.

Should the assessment-levying body not agree to cancellation, the procedure will be to require payment of such assessments by grantors as a contractual obligation in order to deliver title to the State free and clear of such assessments.

**8.04.31.00**      **Disposition of Assessments on Partial Acquisitions**

Title may be taken subject to such assessments if the remaining property is adequate security for the assessment. The obligation to pay off such assessments will usually be a continuing obligation of grantor. No request for cancellation shall be made unless the District has the reassurance of the assessment-levying body that a request for cancellation of such assessments will be honored. When title is taken subject to assessments which cannot be canceled, it should be made clear to grantor that:

- A. State's acceptance of title subject to unpaid assessments does not mean State assumes responsibility for either the payment or subsequent cancellation of such assessments,
- B. Required payment of assessments is not made a part of the contractual obligation of grantor, as between grantor and the State,
- C. State's payment for the part taken is made only on that basis and grantor's obligation to pay such assessments to the levying body is not relieved by reason of State's acquisitions.

Cancellation of assessments will not normally be made by the levying body because such a procedure would involve readjustment of their entire assessment schedule, a procedure impossible of fulfillment once the assessment area and rate have been established.

When title is taken subject to assessments, the following Clause must be included in the Right of Way Contract:

“The parties hereto agree that State, in acquiring title subject to unpaid assessments as set forth herein, is not assuming responsibility for payment or subsequent cancellation of such assessments. The assessments remain the obligation of the grantor; and, as between State and grantor, no contractual obligation has been made requiring their payment.”

**8.04.32.00**      **Remaining Property Assessments**

The following statement may be included in the Contracts when requested by the grantor:

“The construction of the state highway as now proposed shall be done without assessment of any kind therefore being placed against the adjacent remaining portion of grantor’s property.”

**8.04.33.00**      **Franchise Tax Board Withholding**

Where the grantor has an out-of-State address and the property has a value over \$100,000, the following clause will be included in the Contract:

“Under Section 18662, Subdivision (e), of the California Revenue and Taxation Code, a person who sells California real property worth more than \$100,000 and has a last known street address outside of California at the time of transfer of title, is required to pay tax equal to 3-1/3 percent of the sales price.”

Unless an agreement between the California Franchise Tax Board and the grantor of the real property states otherwise, the tax shall be withheld from the escrow proceeds and transmitted to the California Franchise Tax Board.

No money is to be withheld if, during the taxable year of withholding and transfer, the grantor receives a homeowner’s property tax exemption, or the sales price does not exceed \$100,000.

A copy of Section 18662 of the Revenue and Taxation Code is hereby acknowledged to have been received by grantor.

**8.04.34.00**      **Deeds of Trust-Mortgages**

Deeds of trust and mortgages are to be reconveyed or released in full or part as appropriate. Title may be taken subject to a deed of trust or mortgage where a partial acquisition is a small part of a large parcel or of nominal value. An indemnity clause against potential loss by the State must be included in the Contract (see Section 8.04.04.00).

**8.04.35.00**      **Lost Notes or Deeds of Trust**

Trustees usually require a surety bond for twice the amount of a Note or a certified copy and an affidavit in the prescribed form of the Deed of Trust that has been lost or destroyed. The payment of premiums on such surety bonds is the responsibility of the Trustor (Grantor).

**8.04.36.00**      **Trust Deed and Mortgage Payment**

Where deeds of trust or mortgages are to be cleared, the following clause will be included in the Contract:

“Any or all monies payable under this contract up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s), shall, upon demand(s), be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish Grantor with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.”

If the property being acquired has an owner occupied dwelling unit on it, add the following clause:

“The grantor will instruct (escrow agent’s name) to obtain a copy of the promissory note(s) referenced above and deliver it(them) to State if grantor wants to be considered for an interest differential payment.”

**8.04.37.00**      **Prepayment Penalties**

Land acquired for public use is exempt from prepayment penalties on mortgages and deeds of trust. Reference may be made to Section 1265.240 CCP when requesting either partial or full releases or reconveyances.

**8.04.38.00**      **Home Improvement Loan Payment**

The following clause will be included in the Contract when a Federal Home Improvement is to be cleared from the title:

“Any monies payable under this contract (and not demanded under the trust deed referred to above), up to the total amount of unpaid principal and interest, on the Federal Housing Authority Title Improvement Loan made to grantor through (Name of Bank) shall, on demand, be made payable to the persons entitled thereto. The above-mentioned lender will furnish grantor with a receipt showing said monies credited against the indebtedness.”

**8.04.39.00**      **Agreements or Contracts of Sale**

If the parcel to be conveyed is encumbered with an agreement to sell, the interest of the party possessing the interest is to be cleared. A grant deed may be secured from the vendor to the vendee with a demand by the vendor for the use of this grant deed. The vendee will then execute the Contract, making provision for payment of the demand of the vendor, and a grant deed to the State. The two grant deeds are then processed concurrently in the State's escrow. This procedure, or the alternate of having vendor and vendee join in the execution of the Contract and deed, will serve to complete the terms of the original agreement.

The allocation of funds may be provided for in the Contract or by separate escrow instructions between the parties. One of the following clauses will be included in the Contract when Agreements of Sale are to be cleared from the title.

**8.04.39.01**      **Payment Not Yet Determined**

“Any or all monies payable under this contract, up to and including the total amount of unpaid principal and interest on the Agreement of Sale dated \_\_\_\_\_ between \_\_\_\_\_ Vendors, and \_\_\_\_\_ Vendees, shall, upon demand, be paid to the vendor. Vendor shall furnish vendee a proper receipt showing said payment has been credited to the above Agreement of Sale.”

**8.04.39.02**      **Payment Predetermined**

“\$ \_\_\_\_\_ of the total monies payable under this contract shall be paid to \_\_\_\_\_, Vendor, to apply to the unpaid principal and interest on the Agreement of Sale dated \_\_\_\_\_, between Vendor, and \_\_\_\_\_, Vendees. Vendor shall furnish Vendee a proper receipt showing said payment has been credited to the above Agreement of Sale.”

For instructions on Cal-Vet Loan property, see Section 8.22.00.00.

**8.04.40.00**      **Financing Statements**

The Uniform Commercial Code, Division 9, makes provision for the filing of Financing Statements with the Office of the Secretary of State or the County Recorder depending on the collateral. This is to protect the holders of security interest in personal property. Financing Statements have replaced crop and chattel mortgages, and when recorded, should be reflected in the title report obtained by the State.

Local filing is specified for the following types of collateral:

- If the collateral is crops or timber to be cut, filing is in the Office of the County Recorder in which the land involved is located.
- If the collateral is consumer goods, filing is with the Office of the County Recorder of the county where the debtor resides. If the debtor is an organization, the county for filing is the county of its “chief place of business.” If the debtor is a nonresident of this State, filing is with the Office of the County Recorder in the county where the goods are kept.

The Department is interested in the existence of Financing Statements when equipment and/or machinery used in commercial, manufacturing, or industrial operations is purchased under the provisions of Section 1263.205 of the Code of Civil Procedure.

The debtor and creditor may regard this as personal property, is used as collateral and may be considered to be a fixture and part of the realty under the above Code section.

When manufacturing, industrial, or commercial machinery and/or equipment is being acquired as defined by Section 1263.205, the District will send Form UCC-3 (Exhibit 8-EX-21), Request for Information, in duplicate to the Secretary of State, Uniform Commercial Code Division, P.O. Box 1738, Sacramento, California 95808, to ascertain if Financing Statements are on file affecting said items. If the owner is doing business under a name different from that in which the property is vested, then both names will be furnished and a Form UCC-3 will be prepared for each name. An exempt stamp referring to Government Code Section 6103 should be placed to the right of the return address on Form UCC-3 to relieve the Department from payment of fees.

The Agent will assist in securing the release or termination along with the demand of the secured party if a secured interest develops. This is accomplished by the filing of Uniform Code Form UCC-2 (Exhibit 8-EX-22) with the Secretary of State or the County Recorder dependent upon the type of collateral. It should be filed prior to the close of escrow.

Any Contract involving property subject to a “Financial Statement” will have the following clause to provide for payment of obligations covered by the “Financial Statement.”

“Any and all monies payable under this contract, subject to the demands made by superior lienholders, up to and including the total amount due on financing statements, if any, shall, upon demand, be made payable to the holder thereof, said holder to furnish debtor with good and sufficient receipt showing said monies credited against the indebtedness secured by said Financing Statement.”

#### **8.04.41.00      Procedure for Securing Partial Releases from Federal Land Bank**

Mortgages and deeds of trust held by the Federal Land Bank may be partially released upon proper application by the property owner using Federal Land Bank Form 95 entitled “Application for Partial Release.” The “Application for Partial Release” should be directed to the Manager of the Federal Land Bank Association for the particular region. The Federal Land Bank Associations can grant partial releases, consent to easements, authorize removal of improvements, gravel, borrow dirt, timber, trees and vines.

If questions arise as to policy concerning unusual features of a transaction, the Manager of the local Land Bank Association should be contacted.

In condemnation cases, the Federal Land Bank will be served or mailed the appropriate condemnation documents and information at the Federal Land Bank Office located at 3636 American River Drive, Sacramento, CA 95864.

#### **8.04.42.00**      **Improvement Bonds**

Public improvement bonds are a first lien against real property, being prior to mortgages and trust deeds, and should be considered in all acquisitions.

Bonds are to be cleared and eliminated as a lien against the property in all entire acquisitions or partial acquisitions constituting a major portion of the whole.

Where the remainder of the property in partial acquisitions is ample security for payment of the bond, title may be taken subject thereto. A clause setting forth the future obligations of the grantor must be included in the Contract to indemnify the State in the event of possible foreclosure proceedings (see Section 8.04.05.00). Under foreclosure of a bond, fee title will vest in the bond owner, and the State would not have title to the right of way, even though a grant deed was acquired from the original property owner.

The State is liable for the payment of assessments if it acquired property after the date of filing of a copy of the map of an Assessment District with the County Recorder. A lien is created even though an improvement contract has not been awarded and the amount of assessment has not been determined. It is anticipated that during the time between the creation of the lien and the date the amount of assessment is known, purchasers of comparable properties will be acquiring subject to the future assessments. The effect of the lien on properties being acquired for the State should be considered as part of the appraisal process. If the market indicates that other purchasers will be paying the assessments in addition to the purchase price, this will provide the basis for the State to follow a similar procedure. The appraisal should contain sufficient documentation through verification of sales and other interviews to support the appraiser's conclusion. This information will assist the Acquisition Branch in acquiring properties subject to this type of lien.

If the District Office of Right of Way has bills for the payment of assessments and the State is liable as outlined above, payment should then be scheduled. The schedule should include the following:

- A. A copy of the bill showing the amount and billing agency.
- B. The date of recording of the Deed to the State, effective date of possession, or the date of recording of the Final Order of Condemnation, whichever is applicable.
- C. The date of recordation of the Notice of Assessment, Notice of Award of Contract, or the date of filing of the Assessment District map, whichever is applicable.

#### **8.04.43.00**      **Tax Identification Numbers**

The Department is obligated under Internal Revenue Code Sections 6041 and 6045 and State Revenue and Taxation Code Section 18802 to report payments for real estate transactions. Information required includes the grantor's Tax Identification Number (Social Security Number or Federal Employer Identification Number). Title Companies routinely collect this information for the department in formal escrows by using IRS Form 1099-S.

For internal escrows, the department utilizes the Payee Data Record (Accounting Form STD-204). The acquisition agent must secure separate forms for each grantor, with the following exceptions: (1) where transferors are husband and wife at the time of closing, a single form is sufficient, and (2) where the transferor is a partnership, a single form for the partnership should be prepared rather than for the individual partners. Payee Data Record forms should be included with every claim schedule package. Failure to secure this information may result in either no check being prepared or 31% tax withholding. Questions concerning the use of Payee Data Records should be addressed through the R/W Accounting liaison for your Region/District.



## **8.06.00.00 - IMPROVEMENTS AND EXCESS**

### **8.06.01.00**      **General**

The State generally acquires all of the improvements within the right of way required. Often the grantor may want to retain certain improvements and relocate them or State must acquire improvements on remainder property. Each situation requires careful consideration and must be covered by appropriate contract clauses. Also, the appraisal must reflect the appropriate valuation analysis.

Relocation as used in this Chapter is an acquisition concept where improvements are moved from the required property to a replacement, substitute, or remainder property. Improvements pertaining to the realty which an owner has severed from the real estate prior to an acquisition agreement are converted to personal property. As such, they are to be handled under the Relocation Assistance Program.

### **8.06.02.00**      **Miscellaneous Realty Items Acquired**

Where there are items that could be easily removed or create possible misunderstandings as to acquisition, such as well pumps, water softeners, television antennas, wall-to-wall carpeting, venetian blinds, drapes, etc., the following clause will be included in the Contract:

“It is understood and agreed by and between the parties hereto that payment in Clause 2(A) above includes, but is not limited to, payment for \_\_\_\_\_ which are considered to be part of the realty and are being acquired by the State in this transaction.”

### **8.06.03.00**      **Miscellaneous Realty Items Retained by Grantor**

Where the owner is retaining items considered part of the realty, the following clause will be included in the Contract. In these cases, the Memorandum of Settlement (MOS) should indicate the monetary credit being received by the State due to retention of any such items.

“It is agreed that grantor shall retain and remove the following items considered as realty (e.g., wall-to-wall carpeting, TV antenna, evaporative cooler, etc.). It is further agreed that the items retained by grantor will be removed upon termination of any rental agreement between grantor and State or on the day after date of recordation of the Deed conveying title to State, whichever date is later. If grantor fails to remove said items within the time limit specified, said items shall become the property of the State to dispose of as it sees fit.”

“With respect to the payment of the sum stated in Clause 2(A) above and other valuable consideration, receipt of which is hereby acknowledged, the grantor hereby agrees no other rights will accrue under the Federal and State Uniform Relocation Assistance Acts (42 U.S.C. Section 4601, et seq.; Government Code Section 7260, et seq.) to receive reimbursement for the expense of moving and/or reinstallation of the above item(s).”

**8.06.04.00**      **Machinery and Equipment - Removal or Acquisition - Improvements Pertaining to the Realty**

The initial offer where properties contain machinery and/or equipment which are classified as improvements pertaining to the realty must be made based on purchase of such at the approved appraisal amount. If settlement cannot be effected on this basis, an offer may be made based on retention of the machinery and equipment at its in-place value, less salvage. The owner then assumes the cost to relocate and reinstall. The agent must explain that this is an acquisition concept and that relocation assistance is available as a right and the retention at in-place value less salvage is merely an alternate acquisition approach which is entirely optional.

When this type of machinery or equipment is severed from the real estate by the owner prior to agreement, it becomes personal property. Its value is deducted from the appraisal offer and the RAP compensates for the relocation and/or reinstallation of such personal property.

Contracts covering either purchase or removal of machinery and/or equipment shall clearly state that the consideration set forth in the Contract includes payment for either purchase or removal and reinstallation. This applies whether the machinery and equipment is grantor or lessee owned. The owner, therefore, must have the options clearly explained so that the decision made is fair, equitable and in conformance with State and Federal requirements.

If machinery and equipment is purchased by State and the former owner purchases such items at public auction, the terms of such sale or purchase will require the purchaser (former owner) to bear the cost of its removal and installation at a different location.

When the grantor or the lessee desires to retain, remove, and/or reinstall items which are considered as realty or improvements pertaining to the realty on the basis of payment for their in-place value, less salvage value, use the following clause:

“The undersigned grantor (lessee) is retaining the following listed equipment (specify each and every item being retained). Grantor (lessee) acknowledges that payment in Clause 2(A) above includes the in-place value of the retained equipment, less its salvage value. It is understood and grantor (lessee) agrees that retention, cost of removal and cost of reinstallation of such equipment is included in the payment herein made and grantor (lessee) acknowledges no further payment of any kind will accrue.”

The Contract shall list those items which the grantor may remove and the time allowed for removal. Any items to be acquired by the State should be clearly identified as to number, make, and type.

**8.06.05.00**      **Acquisition of Personal Property**

When acquiring motels, hotels or furnished apartments, it may be necessary to acquire the furnishings to prevent the eviction of tenants who would be unable to continue to occupy the premises if the furniture is retained and removed by the fee owner.

The appraisal of these types of properties will contain an inventory and estimated market value of the furnishings.

Whenever the State acquires personal property, the Contract must specify and identify the items being acquired. If the items are numerous, a separate inventory will be made part of the Contract. The inventory must describe each item so it can be readily identified. The manufacturer's number must be given if available, as well as brand name or model. Acquisition of personal property must be authorized by the DDC-R/W or delegatee.

#### **8.06.06.00**      **Exchange of Improvements**

An improvement may be exchanged as whole or part consideration with proper economic justification (see Section 8.12.06.00).

#### **8.06.07.00**      **Relocation of Improvements - General**

Whenever structural improvements are partially or totally within the required right of way, the owner may, at the option of the District, be given the choice of either (1) relocating the improvement in lieu of purchase, (2) having State purchase the improvement, or (3) retaining the improvement. The determination must be based on economic feasibility. The Agent should advise the owner to consider whether relocation in lieu of purchase or retention is a desirable alternative to State's purchase of the improvement. If the appraisal does not contain estimates and the owner indicates the desire to retain or relocate the improvements in lieu of purchase, the Agent should then formally request that estimates be made.

It is essential that the contract be specific as to the items which the owner will retain and remove and those which will become the property of the State. The amount to be paid by the State should be adequate to compensate the owner for all reasonable costs and risks involved.

When payment for moving cost is to be made directly to the owner, it is extremely important that the amount be based on the best and most reasonably competitive moving bids obtainable from qualified contractors. The acquisition agent must see that such bids are obtained. When moving costs represent small sums of money, the District may submit its own detailed estimate prepared by the Appraisal Branch to substantiate the contract payment. When the moving costs represent substantial sums of money, the Acquisition Branch shall endeavor to secure at least two outside bids.

When property is acquired well in advance of construction and the consideration includes payment for rearrangement of improvements on the grantor's remaining property, or payment has been made for replacement of improvements on remaining property, the following clause shall be used in **BOTH** the Contract and Deed:

"It is agreed that the consideration for this conveyance includes all costs that have been or may hereafter be incurred by the grantors herein, or their successors or assigns, for the relocation or rearrangement of any and all improvements that are located on the remaining property of grantors and the grantors, for themselves and their successors or assigns, hereby waive any and all claims for damages of whatever nature that may hereafter accrue to said remaining property by reason of the construction of the highway improvement in the manner proposed, including any damages that have or may hereafter arise to such remainder in the event said existing or future improvements are not relocated or rearranged."

"It is further agreed grantor has been compensated for those improvements (specify them) lying within the right of way and which grantor will replace on the remaining property."

#### **8.06.08.00**      **Owner Relocation of Improvements**

Relocating in lieu of purchase is based on bids secured by the owner or the agent. This option generally has the State involved in assisting the owner in the structure relocation, providing guidance as to local requirements relating to ordinances or permits, etc. The agent should assist in ensuring that the relocation bids cover all the costs involved. If the owner wants to relocate a structural improvement and it is economically feasible, then the following clause shall be used:

“It is agreed that payment in Clause 2(A) above includes funds for the relocation and reestablishment of (here identify the improvement), it being understood the improvement is to be relocated and reestablished by the grantor at State expense. Grantor acknowledges that no payment is made for the purchase of the improvement, it being understood that payment for relocation and reestablishment precludes purchase price.”

#### **8.06.09.00**      **Owner Retention of Improvements**

Retention of structural improvements by the grantor relieves the State of any responsibility for their removal and clearing of the site. The grantor/owner of the improvements assumes the entire obligation of improvement removal and site clearance.

If payment to the owner is the in-place value of the improvement less its salvage value as determined by the Appraisal Branch, then no relocation and reinstallation costs are to be made. The retention cost is normally the amount estimated to be bid at an auction. If the owner is compensated for the improvements in-place value less its salvage value, use clause in Section 8.06.04.00 and substitute the name or type of improvement for the word “equipment.”

#### **8.06.10.00**      **Removal Time Limitations**

If either relocation or retention is part of the settlement, it is advisable to conclude the transaction on the basis the improvement is relocated or removed by the owner as quickly as possible. Structural improvement removal should normally be completed in a 60-90 day period. There may be exceptional cases where it will be appropriate to have improvements remain for a longer period. The file should contain documentation supporting such decision.

The Contract shall specify a date by which the improvements are to be removed and provide for clearance of the site. A portion of a payment shall be withheld to cover State’s cost if the owner fails to perform. The amount should protect the State and provide sufficient funds if the State has to pursue other courses of action to clear the right of way.

The Contract must provide that any structural improvement remaining on the property subsequent to 90 days after close of escrow will result in the State charging market rent for such improvement and the land previously purchased from the grantor.

In either relocation or retention, the Contract shall specify that title to the improvement remains with the grantor/owner and the State is not responsible for any damage due to Act of God or nature, fire or vandalism.

“Piecemeal” removal of portions of a structural improvement which leaves the structure in an unrentable condition will not be allowed.

Relocation assistance benefits, while not part of terms of the Contract, may have some influence on the eventual settlement. Close coordination with RAP is essential to ensure that owner and State are fully protected.

#### **8.06.11.00**      **Tax Liability**

The following clause will be used whenever improvements are retained by the grantor:

“It is understood that the undersigned grantor retains full responsibility and liability for all delinquent and current taxes on building improvements hereinabove reserved.”

#### **8.06.12.00**      **Improvements Retained by Grantor - Entire Acquisition**

The following clause will be used in the Contract:

“The grantor reserves the right to remove the hereinafter described improvements located on said property on or before \_\_\_\_\_. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundation; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements.”

“The said improvements, which the grantor reserves the right to remove, consist of: \_\_\_\_\_.”

“\$\_\_\_\_\_ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until said improvements, including combustible materials and rubbish, have been removed from the premises and until all of the conditions above have been complied with within the time limit set forth above.

“If said improvements are not removed in their entirety, at the grantor’s expense on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State shall dispose of said improvements as it may see fit and the grantor hereby agrees that the State shall retain the sum of \$\_\_\_\_\_ as liquidated damages and costs to the State for removing the improvements.”

Where utility service lines to buildings other than those being reserved by the grantor are affected, it will be necessary to add the following to the first paragraph in the above clause:

“In the event any utility service lines to other buildings are disconnected, destroyed, or otherwise impaired in any way by reason of the removal of said improvements, grantor, at grantor’s own cost and expense, shall provide such other buildings adequate, substitute utility service lines in lieu of those affected.”

**8.06.13.00**      **Improvements Retained by Grantor - Partial Acquisition (Sufficient Remainder for Setback)**

The following clause is to be used in these cases to relocate improvements situated in the right of way area. The amount to be withheld shall be sufficient to remove, but not reset, the improvements from the right of way area and dispose of combustible materials and other rubbish.

“The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before \_\_\_\_\_. Upon exercising said reserved rights, grantor covenants and agrees to remove all combustible materials and other rubbish from within the right of way area upon completion of moving operations, leaving only concrete foundations, and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements.”

“The said improvements, which the grantor reserves the right to remove, consist of: \_\_\_\_\_. \$\_\_\_\_\_ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until such improvements, including combustible materials and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limit set forth above.”

“In the event said right of way area has not been cleared of said improvements on or before said date, the State, or its authorized agent, is hereby granted the right to enter upon the adjacent property of the grantor for the purpose of moving said improvements clear of the right of way and onto grantor’s adjacent property without incurring any liability or responsibility for the location or condition of said improvements, and grantor hereby agrees that the State shall retain the said sum of \$\_\_\_\_\_ as liquidated damages and costs to the State of removing said improvements from the right of way area.”

**8.06.14.00**      **Improvements Retained by Grantor - Partial Acquisition (Insufficient Remainder for Setback)**

The following clause is used in these cases. Where improvements have salvage value, the amount to be withheld shall be sufficient to guarantee cleaning up the premises. If improvements have no salvage value, the amount withheld shall be sufficient to cover State's out-of-pocket cost for removal or demolition in clearing the right of way area.

"The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before \_\_\_\_\_. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish within the right of way area upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The said improvements, which the grantor reserves the right to remove, consist of: \_\_\_\_\_. \$\_\_\_\_\_ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until said improvements, including combustible materials and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limits set forth above."

"If said improvements are not removed in their entirety, at the grantor's expense, on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State shall dispose of said improvements as it may see fit. State, or its authorized agent, is hereby granted the right to enter upon the adjacent property of the grantor for the purpose of removing said improvements from the right of way area, and grantor hereby agrees that the State shall retain the said sum of \$\_\_\_\_\_ as liquidated damages and costs to the State of removing said improvements from the right of way area."

**8.06.15.00**      **Improvements Retained by Grantor - Partial Acquisition (Greater Portion of Building in Right of Way Area) Right to Remove Entire Building**

In these cases, where improvements have salvage value, the amount to be withheld shall be sufficient to guarantee cleaning the premises after completion of moving or demolition operations. If improvements have no salvage value, the amount withheld shall be sufficient to cover State's out-of-pocket cost for removal or demolition in clearing the right of way area. The following clause applies:

"The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before \_\_\_\_\_. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish from within the right of way area upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

“The said improvements, which the grantor reserves the right to remove, consist of: \_\_\_\_\_. \$\_\_\_\_\_ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until the improvements, including combustible materials and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limit set forth above.”

“If said improvements are not removed in their entirety from right of way area at the grantor’s expense, on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State shall dispose of said improvements as it may see fit. State, or its authorized agent, is hereby granted the right to enter upon the adjacent property of the grantor for the purpose of removing said improvements from the right of way area, in which event title to that portion of the building described as a (type of building) and located (location or address) resting on or supported by the remaining property of the grantor is thereon conveyed to the State, and the State is granted the right to remove said improvements in their entirety, to dispose of as it may see fit, and grantor hereby agrees that the State shall retain the said sum of \$\_\_\_\_\_ as liquidated damages and costs to the State of removing said improvements from the right of way area.”

**8.06.16.00**      **Improvements Retained by Grantor - Partial Acquisition (Small Portion of Building in Right of Way Area) Right to Cut Off Building**

Use the following clause in these cases. The amount to be withheld shall be sufficient to cover the cost of cutting the building on or near the right of way line, installing temporary bracing to the remaining portion of building, constructing temporary closure, and cleaning the premises.

“The grantor reserves the right to remove the hereinafter described improvements partially located in the right of way area on or before \_\_\_\_\_. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish from within the right of way area upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements.”

“The said improvements, which the grantor reserves the right to remove, consist of: \_\_\_\_\_. \$\_\_\_\_\_ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until the improvements, including combustible materials and rubbish, have been removed from the right of way area within the time limit set forth above.”

“If said improvements are not removed in their entirety from the right of way area, at the grantor’s expense, on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State, or its authorized agent, is hereby granted the right to enter upon the adjacent property of the grantor for the purpose of severing and removing those portions of the improvements situated in the right of way area and may dispose of all such improvements or portions thereof situated in the said right of way area, in such manner as it may see fit, and grantor hereby agrees that the State shall retain the said sum of \$\_\_\_\_\_ as liquidated damages and costs to the State of removing said improvements from the right of way area.”



**8.06.17.00**      **Improvements Retained by Grantor - Garages and Service Stations**

The following clause is for use when grantor retains service stations, garages, and underground gasoline and oil storage tanks. The amount to be withheld shall be sufficient to guarantee the removal of the tanks and the cleaning of the premises.

“The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before \_\_\_\_\_. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct a temporary barricade around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements.”

“The said improvements, which the grantor reserves the right to remove, consist of: \_\_\_\_\_. Gasoline and oil storage tanks shall be removed in their entirety, any and all contaminated soil shall be removed and disposed of in accordance with existing regulations and the holes backfilled with suitable material and compacted. The Fire Prevention Bureau shall be notified before removing tanks.”

“\$\_\_\_\_\_ of the total payment provided for under Clause 2(A) above shall be withheld by the State until said improvements, including combustible materials, contaminated soil, and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limit set forth above.”

“If said improvements are not removed in their entirety, at grantor’s expense on or before said date for any reason whatsoever, the right to remove said improvements shall terminate, and the State of California shall dispose of said improvement as it may see fit, and the grantor hereby agrees that the State shall retain the said sum of \$\_\_\_\_\_ as liquidated damages and costs to the State of removing said improvements.”

**8.06.18.00**      **Service Connections - Improvements to be Moved by Grantors-Partial Acquisitions**

The following clause must be included in the Contract:

“It is understood and agreed that the above payment to grantor also includes any and all costs of grantor for relocation or extension of utility service connections to the buildings so relocated.

“In the event any utility service lines to other buildings are disconnected, destroyed, or otherwise impaired in any way by reason of the removal of said improvements, grantor, at grantor’s own cost and expense, shall provide such other buildings adequate substitute utility service lines in lieu of those affected.”

**8.06.19.00**      **Relocation of Improvements by State**

Whenever a Contract provides for the relocation or installation of improvements by the State, the Contract must be specific in describing the work to be performed. The District's estimate of the cost involved shall be incorporated in and made part of the MOS (see also Sections 8.10.02.00 and 03.00 and the RAP Chapter).

Sketch maps showing the proposed work should be made a part of the Contract.

When there are service connections to be replaced, the following clause must be in the Contract:

“It is understood and agreed that all utility service connections to the buildings to be relocated shall, without cost to the grantor, be extended to said buildings in the new location.”

**8.06.20.00**      **Permission to Enter Grantor's Land for Improvement Removal**

Acquisition of improvements, which straddle the new right of way line, requires the use of the following clause without exception:

“It is understood and agreed between the parties hereto that payment shown in Paragraph 2A above includes payment to grantor for certain improvements located partly within and partly without the right of way area.

“Said improvements consist of: \_\_\_\_\_. The State, or its agent, is hereby granted the right to enter upon the remaining property of the grantor for the purpose of removing said improvements.”

Note: If desired by the grantor, the following may be added:

“It is further agreed that the State or its agents will remove said improvements on or before \_\_\_\_\_.”

**8.06.21.00**      **Partial Acquisition of Residential Property with Owner/Occupant Displaced but Owner Requests Retention of Remainder**

There may be times when the owner will want to retain a remainder even though the owner is displaced. The appraisal will have been prepared on a primary total acquisition basis because the remainder was considered to have little market value. If the owner requests retention of the remainder, an alternate partial acquisition appraisal will have to be prepared. It must not be used as the basis for a revised offer until the RAP Branch has had the opportunity to calculate the RAP benefits. This is essential to preclude the possibility of making an excessive purchase differential payment.

Since this particular subject could develop into several variations, a general instruction is not possible. Individual cases will require careful analysis and the assistance of the RAP section to avoid the circumstance of either withdrawing an offer or having an insupportable offer accepted.

#### **8.06.22.00      Acquisition of Uneconomic Remnants and Excess Acquisition**

Occasionally, when properties are partially within the right of way, the owner will request that the entire property be purchased. Categories of acquisition of the excess are:

Category 1. Uneconomic Remnant [May be condemned (see Section 9.01.12.00 Specific Statutory Authority)]

- a. in the market
- b. to the owner
- c. due to construction costs or large damages

Category 2. Excess Acquisition

No RAP accrues to the excess area.

These categories are discussed in Appraisal Chapter Section 7.03.04.00. If the purchase is made under Category 2, the following clause must be included in the Right of Way Contract:

“It is understood and agreed that the purchase of the entire property described in Grant Deed No. \_\_\_\_\_ is at the sole request of and as a convenience to the undersigned grantor and relocation assistance benefits will not accrue since this is not a State initiated displacement.”

RAP benefits may accrue to tenants. See the RAP Chapter for discussion relating to acquisition of remainders by voluntary transactions or condemnation initiated with the consent of the owner.

In those cases where management considers acquiring the remainder as excess, it must be kept in mind that excess land and improvements thereon are not eligible for federal participation. Damages to the remainder in excess land acquisitions are eligible. The acquisition cost of the excess is not eligible.

For uneconomic remainder and excess land acquisition, the Appraisals Branch will prepare a primary appraisal and an alternate appraisal. If the need for acquiring excess becomes apparent only after the original appraisal is completed, the alternate appraisal must be requested by the Acquisitions Branch. (See Sections 7.03.04.01 and 8.50.04.01.)

**NOTES:**

## **8.09.00.00 - RENTAL AND POSSESSION PROVISIONS**

### **8.09.01.00      Clauses for Grace Period, Early Vacation and Rent Confirmation**

- A. Contracts with owner-occupants of residential units who wish to remain in occupancy after close of escrow will contain fair market rental provisions and shall have the following clauses included in the Contract:

“It is agreed that the grantor(s) shall have a 15-day grace period commencing on the day following the date of recordation of the deed conveying title to the State. It is agreed that commencing on the day following the expiration of the grace period and thereafter, the State will rent the property to the grantor using the State’s standard form of Rental Agreement.”

If desirable, the rental rate may be included in the Contract by adding the following:

“The rental rate shall be \$\_\_\_\_\_ per month subject to all the terms and conditions as contained in said rental agreement, including the right of either party to cancel and terminate such rental agreement upon written notice as specified in said rental agreement. Said rental rate shall remain in effect for a period of at least one year, if the property is available for occupancy for that period, and subject to the right of the State to establish a new rental rate after one year if the property remains available for rent.”

- B. If early vacation of an owner-occupied residential unit is necessary, use the following:

“It is agreed that grantor(s) shall, on the day following the expiration of the fifteen day grace period, vacate and deliver the above-described premises vacant to the State and in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to the Department of Transportation (address) and also pay all closing utility bills up to and including the date of vacation.

In the event, however, grantor(s) does (do) not vacate the premises, grantor(s) agree(s) to pay the State at the rate of \$\_\_\_\_\_ per day for use and occupancy of said premises beginning the day following the recordation of the deed conveying title to the State; and the acceptance of such payment by the State shall in no way create a new tenancy between the parties.

In the event grantor vacates the premises prior to the recordation of the deed conveying title to the State, the State is hereby granted possession to use, occupy, or rent the property as it sees fit.”

- C. If the grantor insists on written confirmation of the rental rate to be charged for continued occupancy after State takes title to the property, the following clause will be included in the Right of Way Contract:

“It is agreed State will rent the property to grantor, using State’s standard form (Rental or Lease Agreement) commencing the day following the close of escrow. The (Rental-Lease) rate shall be \$\_\_\_\_\_ per month subject to all the terms and conditions in said (Rental-Lease) agreement, including the right of either party to cancel and terminate said agreement upon written notice as specified in said (Rental-Lease) Agreement. Said (Rental-Lease) rate shall remain in effect for a period of at least one year, if the property is available for occupancy for that period. State has the right to establish a new (Rental-Lease) rate after one year if the property remains available for occupancy.”

**8.09.02.00**      **Delivery of Property Vacant at Close of Escrow**

If early vacation of owner-occupied, nonresidential property is necessary, the following clause will apply:

“It is agreed grantor(s), on the day following the date title vests in State, will vacate and deliver the above-described property to State in good order and condition without further notice and immediately thereafter deliver the keys thereto to the Department of Transportation, (address), and also pay all closing utility bills up to and including the date of vacation.”

**8.09.03.00**      **Delivery of Property Vacant After Close of Escrow**

Where the owner desires to retain possession of the property beyond the date of close of escrow, the following clause will be included in the Contract. [The Memorandum of Settlement (MOS) must indicate the consideration the State is receiving for granting such occupancy.]

“It is agreed that grantors shall deliver the above-described premises vacant to State on or before \_\_\_\_\_ days after the date of recordation of the deed conveying title to State, in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to the Department of Transportation (address) and also pay all closing utility bills up to and including the date of vacation.”

**8.09.04.00**      **90-Day Notice of Intention to Take Possession**

It is Department policy to schedule construction projects so that no persons lawfully occupying real property required for highway or related purposes shall be required to move from their home, farm or business location without at least 90 days’ prior written notice from the State or other political subdivision having the responsibility for such acquisition. (Refer to the RAP Chapter for details.) See the Condemnation Chapter for a discussion on Orders for Possession.

**8.09.05.00**      **Eviction by State**

The State must either own the property or have legal possession under an Order for Possession (OP) before eviction proceedings can begin. Acquisition must work closely with Relocation to assure that State and Federal procedures are fully complied with. Property Management should be consulted with on how to proceed with evictions since procedures can vary by local jurisdiction.

**8.09.06.00**      **Lease Warranty Provision**

Where the owner claims that tenants occupy the property being acquired on a month-to-month tenancy, the following clause will be included in the Contract:

“Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantor agrees to hold State harmless and reimburse State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of grantor for a period exceeding one month.”

**8.09.07.00**      **Rent Proration and Security Money Collection for Other Than Owner-Occupied Single Family Residential Properties**

The following clause will be included in the Contract where property is tenant occupied:

“The grantor(s) shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to State upon compliance by the grantor(s) with the conditions of this contract. All rents and all security money collected by grantor(s) applicable to any period thereafter shall be paid to the State. Either party hereto collecting rents or security money to which the other party is entitled shall forthwith pay such amount to the other as is necessary to comply with the provisions of this clause.”

**8.09.07.01**      **Rent Proration by Escrow Agent**

If the District desires that rent be prorated by the escrow agent through use of separate Rental-Escrow Instructions made a part of the Right of Way Contract, use the following clause:

“The grantor(s) shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to State upon compliance by the grantor(s) with the conditions of this contract. All rents and all security money collected by grantor(s) applicable to any period thereafter shall be paid to the State in accordance with the terms and conditions of the Rental-Escrow Instructions attached hereto and made a part hereof. Either party hereto collecting rents or security money to which the other party is entitled shall, in the final settlement of this contract, pay such an amount to the other as is necessary to comply with the provisions of this clause.”

**8.09.07.02**      **Definite Rent Proration Date Established**

If grantor insists on a definite date for proration of rents, the following clause may be used:

“All rents shall be prorated as of (date). All rents derived from said property up to and including said date shall be paid to the grantor(s), and all rents derived thereafter shall be paid to the State of California. If any rentals on said property have been or are collected by the undersigned grantor(s) for any period beyond said date, the undersigned grantor(s) shall immediately refund such rentals to the State.

All security money collected by the undersigned grantor(s) shall be paid to the State of California.”

**8.09.08.00**      **Grantor Retaining Temporary Possession**

The following clauses may be used where it is advantageous to allow the grantor to retain possession and use of the property, e.g., avoidance of crop damage payment, control of noxious weeds, agricultural land without an independent water supply or property not capable of independent use. Prior approval of the DDC-R/W must be secured before either of these clauses are included in any Contract.

It is essential in the use of either of these clauses that complete justification be included in the Memorandum of Settlement (MOS). Without justification, it is tantamount to a gift of State property.

“Until such time as the State elects to take possession of any or all of the property acquired herein, the grantor shall have the use and enjoyment of its surface in the same manner as now used, except that in no event shall any advertising sign of any nature whatsoever be placed upon or allowed to remain on the property. Grantor agrees to keep the premises in a neat and clean condition.

The grantor agrees that no improvements other than those already on the property, shall be placed thereof; and the planting of any crops, trees, or shrubs, or alterations, repairs, or additions to existing improvements which may hereafter be placed thereon are at grantor’s risk and without expectation of payment if removed by the State.”

Where temporary possession is being allowed and the land is improved with an orchard, or similar enterprise, the District should use the following clause which provides for good husbandry practices, including pest control.

“It is agreed that the undersigned grantor(s) shall harvest the existing \_\_\_\_\_ crop on that portion of grantor’s property being acquired by the State. It is further understood that said crop shall be harvested on or before \_\_\_\_\_ and, if not harvested by said date, shall become the property of the State to dispose of as it may see fit. The undersigned grantor(s) agree(s) to cultivate and maintain the existing crop in conformance with the practices of good husbandry, including pest control, up to and including date grantor(s) harvest(s) said crop.

It is further understood that this property shall be used only for the purpose of maintaining and harvesting the crop on the subject property.

Upon the failure of the grantor(s) to comply with any condition or provision of this agreement, the authorization to harvest said crop by the grantor(s) shall immediately cease and possession shall be taken by the State.”

#### **8.09.09.00**      **Right of Entry-Waiver Clause**

After an appraisal has been approved and an offer made, authority to solicit a Right of Entry from the owner may be granted by the DDC-R/W. When deemed absolutely necessary to solicit a Right of Entry from an owner before initiation of negotiations, approval of the DDC-R/W must first be obtained. Complete documentation for such action must be in the acquisition file.

Authorization to solicit Rights of Entry prior to the appraisal process and initiation of negotiations shall be restricted to circumstances which are exceptional or emergency in nature. Ordinarily, the Right of Entry will not dislocate people or impact improvements of a significant nature. Typically, Rights of Entry prior to initiation of negotiations involve emergency projects or situations which constitute a hazard to the traveling public, or additional areas required during construction of the transportation facility and are not in conflict with the environmental document related to the project. The normal appraisal and acquisition process must not be unduly delayed after the securing of a Right of Entry prior to the initiation of negotiations.

Whenever the content of a Right of Entry is revised or modified from the standard form, approval of Legal must be obtained prior to submitting the Right of Entry to the owner for execution.

The Right of Entry - Long Form (Exhibit 8-EX-23) and Agreement for Possession and Use (Exhibit 8-EX-25) contain a standard clause waiving the owner’s right to appear before the California Transportation Commission.

This clause must be included since omission of the clause would provide the owner with the right to question the validity of a project which may be under construction or completed at a time when a Resolution of Necessity may be sought. In limited instances, the Right of Entry - Short Form (Exhibit 8-EX-24) is used, which does not include the waiver clause, may be used. There may be circumstances in which the Right of Entry will not be used. This could occur in emergency situations where there is an immediate danger to life, property, or the highway facility. Under such circumstances, the Department may rely on its Police Power.

The use of a Right of Entry is only appropriate in those situations where the State would ultimately acquire the needed interest by eminent domain proceedings. Whenever it becomes necessary to institute such proceedings on parcels under the State’s possession by Right of Entry or Agreement for Possession and Use, there is no need to mail the Notice of Intent.



In exchange for the Department's early possession and use of a property, in those infrequent occasions where settlement has not been reached or condemnation does not appear to be the appropriate course of action, a non-"large organization" property owner will be given the option of receiving compensation based on the State's estimate of just compensation or payment of interest on the settlement amount. The parcel diary will reflect that such property owners were given this option and their preferred course of action.

If the owner elects to receive payment of interest on the settlement amount and defer immediate compensation, the Region/District will pursue execution of a Right of Entry document.

If the owner elects to receive immediate compensation, the Region/District will pursue execution of an Agreement for Possession and Use document.

#### **8.09.09.01**      **Agreement for Possession and Use**

The Agreement for Possession and Use provides the legal right for the State to possess and use the owner's property prior to the execution of a Right of Way Contract, and, at the same time, allows the owner to receive just compensation for the State's possession and use of the parcel. When an owner elects not to receive immediate compensation, the Right of Entry document can be used.

Use Exhibit 8-EX-25 for the Agreement for Possession and Use. The Agreement for Possession and Use requires that the State record a Memorandum of the Agreement (Exhibit 8-EX-35) and deposit funds into an escrow account to allow the owner to withdraw funds. Refer to Sections 8.60.00 through 8.68.00, and Exhibit 8-EX-36 for more detailed instructions. The process should include proper notification of the owner on the withdrawal of funds. It is critical that lien holders be notified that an escrow and sale are pending to ensure the owner does not withdraw funds that will be needed to satisfy any liens against the property.

#### **8.09.10.00**      **Construction Permits and Permits to Enter and Construct**

When temporary rights are needed to perform work for grantor's benefit, a Permit to Enter and Construct or Construction Permit may be used. These documents provide no permanent right to the State and may be used when the State would not condemn the rights secured. See Exhibits 8-EX-26 and 8-EX-27.

#### **8.09.11.00**      **Temporary Easements**

Where State must enter adjoining property for temporary use during construction, the appropriate right is a Temporary Easement. This is also the right to be acquired through eminent domain when negotiations fail.

#### **8.09.12.00**      **Indemnification by State**

Where rights of a temporary nature (material agreements, detour easements, drilling permits, etc.) are required, and the property owner or other party to the agreement requests to be indemnified by the State for any damage caused by reason of the uses authorized by such agreement, the following clause may be used:

"State agrees to indemnify and hold harmless (name of other party to agreement) from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State's operations under this agreement and State will, at its option, either repair or pay for such damage."

Easements for slope purposes, whether temporary or permanent, are not considered as being "temporary" for the purposes of this section.

**8.09.13.00**      **Right of Possession**

Where early possession is required and no Order for Possession has been obtained, add the following clause to the Contract:

“It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, shall commence on \_\_\_\_\_ or the close of escrow controlling this transaction, whichever occurs first, and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.”

**8.09.14.00**      **Confirming Date of Possession**

Whenever State has secured an Order for Possession or a Right of Entry and settlement is by Contract, the contract shall include the following clause:

“It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, commenced (effective date of Order for Possession or Right of Entry) and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, and interest from said date.”

See the R/W Engineering Chapter for deed clause where an Order for Possession or Right of Entry has been obtained.

**8.09.15.00**      **Confirming Vacation in Hardship Acquisitions**

The following clause is only to be used in hardship acquisitions. Although it should be adequate to accomplish the stated objective, the District should use extreme care in implementing it. Under Government Code Section 87261(b)(3), the District must be able to assure the grantor (who, upon acquisition, becomes eligible for benefits under the Relocation Assistance Act) that within a reasonable period of time prior to displacement, comparable replacement housing will be available. Further, Section 6042 of the Department of Housing and Community Development (HCD) Guidelines requires that the displacee be actually offered replacement housing before forced to vacate the property. For this reason and because eviction can only be used as a last resort, the 90-day notice should be served on the grantor only after having been given a reasonable number of offers of a replacement dwelling [HCD Guidelines SS6042(d), 6058].

“It is understood and agreed between the parties hereto that the sole reason for the State’s purchase of the subject property at this time is to alleviate a hardship condition presently suffered by the grantor(s) and that said hardship can only be cured by the grantor(s) selling and vacating the premises. It is, therefore, confirmed by the parties hereto that the grantor(s) has (have) received notice of the State’s intent to serve a 30-day Notice to Vacate and that said Notice to Vacate will be served either (1) after the close of escrow or (2) after 90 days from the date of said notice of intent to serve the 30-day eviction notice. Grantor(s) will deliver the premises vacant to the State in good order and condition without further notice and will immediately thereafter deliver the keys to the premises to the Department (District Office address) and also pay all closing utility bills up to and including the date of vacation.”

## **8.10.00.00 - CONSTRUCTION OBLIGATIONS**

### **8.10.01.00**      **General**

Construction contract obligations require the State to do certain work on grantor's remaining property to avoid payment of damages. This work can range from construction of fences and irrigation facilities to replacement of structures. As such, the conditions must be completely described in the Contract and discussed in the Memorandum of Settlement (MOS). Project Development and Construction must be notified in writing of these obligations. Appropriate entry clauses must be included in the Contract.

### **8.10.02.00**      **State Performed Work**

The following clause shall, in all cases, be the last paragraph of any clause in a Contract where the State will move, relocate, or reconstruct buildings or fences, pipelines, cattle passes, etc.:

“All work done under this agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by the State, shall be left in as good condition as found.”

### **8.10.03.00**      **Permission to Enter Grantor's Land for Construction Purposes**

When it is necessary to enter onto owner's remainder property to perform construction contract work on facilities for owner's use, the following clause will be included in the Contract. This clause can be used with appropriate modification to allow entry for more than one type of construction work. It is not necessary to repeat the clause for each and every entry requirement.

“Permission is hereby granted to State or its authorized agent to enter on my/our land, where necessary, to (relocate or reconstruct road approaches, cattle guards, trails, pipes, culverts, etc.), as shown on the attached map(s) and as described in Clause(s) \_\_\_\_\_ of this Contract.

I (we) understand and agree that after completion of the work described in Clause(s) \_\_\_\_\_, said facility(ies) will be considered as my/our sole property and I (we) will be responsible for its/their maintenance and repair.”

### **8.10.04.00**      **Road Approach Within State Highway Right of Way**

When it is necessary to perpetuate existing private roadways which lie partially or entirely within highway right of way, the following clause will be included in the Contract:

“At no expense to the grantor(s) and at the time of highway construction, construct road approach(es) \_\_\_\_\_ of Engineer's Station(s) \_\_\_\_\_, Department of Transportation Survey between \_\_\_\_\_ and \_\_\_\_\_. Upon completion of construction of said road approach(es) it/they will be considered as an encroachment under permit on the State highway and is/are to be maintained, repaired and operated as such by grantor(s) in accordance with and subject to the laws of the State of California and the rules and regulations of the Department of Transportation of said State.”

Since the Permit Section must be aware of all encroachments within the highway right of way, a copy of the Contract shall be forwarded to the District Permit Section. They may feel it necessary to issue a Standard Encroachment Permit in lieu of using the Contract as the permit. If so, the agent should assist the Permit Section in obtaining any necessary signatures, however, the permit should be issued without charging any fees.

This same clause should be used where pipelines or conduits are being installed within the highway right of way as encroachments. The clause would have to be revised to suit this type of installation. Again, a copy of the contract should be provided the Permit Section.

#### **8.10.05.00**      **Property Monuments**

The Land Surveys unit will notify the Right of Way Project Coordinator when it is discovered through project survey work that a property monument will be impacted as part of a project's proposed construction. The R/W Project Coordinator will share this information with the appropriate R/W unit that will be handling the acquisition. If during the negotiations the property owner expresses a desire to have the property monument(s) replaced, the R/W Agent will handle each request on a case-by-case basis. Where it is determined that compensation will be provided, it will be handled via an administrative settlement. If it is determined that compensation is in order for the destroyed monument, the R/W Contract must expressly provide that the grantor has received payment in full and the State is released from any additional obligation in regard to property monuments. The following clause may be used:

“Grantor understands and agrees that the amount to be paid under Clause 2(A) includes payment in full to compensate Grantor for the destruction of his/her property monument(s). Grantor releases and holds the State harmless from any additional obligation or liability with respect to this(these) monument(s).”

#### **8.10.06.00**      **Divided Highway Crossovers**

No obligation is to be assumed in any Contract or Judgment to install crossovers in a median strip. Any such obligation would be contrary to highway design and safety standards.

#### **8.10.07.00**      **Fruit Trees Within the Right of Way**

Because of potential problems involving disease or insect infestation, the Department should not maintain fruit bearing trees as such within the right of way. Where conditions justify, this procedure may be modified to allow trees to remain solely for shade or ornamental purposes. This may involve removing extra trees so that spacing will conform to highway standards. The maintenance forces will be responsible for necessary spraying and care of the trees.

When right of way is being acquired through orchard land in anticipation of future construction, the Contract may provide for the owner to retain the responsibility for the care of the trees, including harvesting, pest control, proper cultivation, pruning, etc., pending highway construction (see Section 8.09.08.00). If the grantor is not desirous of retaining this obligation, the District should immediately arrange for removal of the trees as soon as feasible after close of escrow.

#### **8.10.08.00**      **Fencing - Access Control**

The Project Development Procedures Manual classifies fencing either as “freeway” or “property” depending on whether the fence is used for access control or to serve the abutting property owner’s needs. Freeway fences are placed within the right of way to act as physical barriers to enforce access control. Property fences are privately owned and maintained to serve the abutting property owner’s needs. Although they are the property of the owner, certain types of fences may satisfy access control requirements.

No condition shall be included in the Contract which would limit State’s right to construct access control fences or barriers within the right of way of any access controlled highway.

#### **8.10.09.00**      **Installation of Property Fence**

Where it is the State’s obligation to either build or relocate a property fence, a clause must be in the contract patterned after the following:

The State shall:

“Install 2 foot 7 inch +/- wire mesh and three lines of barbed wire fastened to metal posts spaced at \_\_\_\_\_ foot intervals or spacing to conform to standard specifications for this project along and immediately adjacent to the State highway right of way line, but on the undersigned grantor’s remaining property, and extending from (left or right of) Engineer’s Station \_\_\_\_\_ to Engineer’s Station \_\_\_\_\_.

#### **8.10.10.00**      **Payment in Lieu of Construction Obligation Covering Fencing**

If grantor insists on payment to perform fence installation, the Contract must expressly provide that grantor has received payment in full to do the work and that the State is released from any obligation in regard to fencing. The following clause is to be used:

“It is agreed that included in the amount payable under Clause 2(A) above is payment in full to compensate grantor for the expense of installing fencing between (left or right of) Engineer’s Station \_\_\_\_\_ and Engineer’s Station \_\_\_\_\_. The grantor releases the State from any obligation to construct said fencing.”

In some instances, it will be appropriate to withhold funds to ensure construction of the fencing.

#### **8.10.11.00**      **Construction of Sidewalks**

Under no circumstances shall any obligation be assumed to construct or pay for sidewalks except as a replacement or as an offset against other consideration owed to the grantor. Where frontage roads are to be connected to local streets that would otherwise dead-end at the freeway, and where such intersecting streets have sidewalks, it will be in order to construct sidewalks along the frontage roads. Such sidewalks are considered to be a replacement of existing facilities and, as such, are not right of way obligations.

**8.10.12.00**      **Approval of Change Orders**

The Construction Department will submit to the DDC-R/W, for approval, all change orders covering the performance of work which is in fulfillment of a right of way obligation. It shall be the responsibility of the DDC-R/W to investigate and determine if the work proposed in the change order is proper.

If the work proposed by the change order is a right of way obligation, the DDC-R/W will note approval on the yellow copy of the change order. In the event the work involves a right of way obligation not covered by a Right of Way Contract, then a letter of explanation shall be prepared by the DDC-R/W and submitted to Office of Construction Engineer along with the change order.

## **8.16.00.00 - HAZARDOUS WASTE**

### **8.16.01.00      General**

Hazardous Waste (HW) is of great concern to the Department and the California Transportation Commission (CTC). The Department must not acquire property contaminated with HW without adequate prior investigation and proper contractual and valuation safeguards.

Decisions on follow-up investigation to determine cleanup costs must be made as soon as possible to allow for timely certification of a project and to avoid limiting the Department to the option of (1) delaying the project or (2) acquiring property with possible contamination. To achieve this, it is critical that Project Development, Right of Way, and the HW Advisor coordinate their activities.

Properties required for right of way which either contain or are suspected to contain HW may be acquired only after the established conditions and procedures have been complied with. Some HW acquisitions may require HQ approval of the Deputy Director, Project Development and the Deputy Director, Planning (see Section 8.16.01.01). Once contamination is known, the property owners shall be advised of their responsibility under the law to clean up all identified HW. The preferred procedure is to not acquire property in its contaminated state, and all efforts possible should be extended to obtain cleanup prior to acquisition.

As a normal rule, HW problems must be dealt with at the earliest stage of the project as is possible. If HW is discovered during the acquisition process:

- A. R/W is to immediately advise District Project Development, in writing, with a copy to the District HW Coordinator.
- B. Project Development will inspect site and advise:
  - 1. R/W to proceed with acquisition if, in their opinion, no significant problem exists and further investigation is unnecessary; or
  - 2. HW Coordinator will contract for further investigation to determine if contamination exists and, if so, the nature and dimension of the waste. Further investigation by a contractor to determine costs of cleanup may be necessary.
- C. Project Development may advise R/W to proceed, because it is in the best interest of the State to acquire property as potential HW contamination risks and costs are low or the problem can be handled with engineering methods during construction. This decision to acquire is made by Project Development and must be fully documented in the parcel file with a copy attached to and made a part of the MOS. Prior approval of HQ R/W is not required.

The appropriate clause must be included in the Right of Way Contract (see Sections 8.16.02.00 through 8.16.06.00).

- D. If further investigation is necessary, Acquisition will continue contact with owner(s)/operator(s) to advise of the process being pursued and to obtain necessary permits to enter.

When testing is complete and cleanup costs are known, the appraisal must be revised to reflect the effect contamination and required cleanup has on market value.

- E. Settlements, whenever possible, are to be based on cleanup prior to acquisition using the primary appraisal. Settlements made where cleanup occurs after acquisition are to be handled as follows:
1. Offers made prior to obtaining a revised appraisal will be made contingent on cleanup and shall be confirmed in writing. When the appraisal has been revised to include an alternate, considering the effect on the market value, the current offer must be withdrawn and a new offer made.
  2. If settlement is reached based on the Department doing the cleanup based on the primary appraisal, the amount of the estimated cleanup shall be withheld and the appropriate clause will be included in the Right of Way Contract (see Section 8.16.03.00). Prior written approval of District Project Development and appropriate documentation are required.
  3. If settlement is not reached where money is withheld, it may be necessary to acquire based on the alternate appraisal wherein the Department is purchasing the property as is, after the consideration of cleanup is reflected in the acquisition offer. Again, prior written approval of District Project Development and appropriate documentation in the file and in the MOS are required. The appropriate clause will be included in the Right of Way Contract (see Section 8.16.03.00 Alternate Clause).
  4. Where settlement cannot be reached and the property owner will not clean up the property, it may be necessary to file a condemnation suit and obtain an OP. The appraisal must be revised to include an alternate that reflects the effect of the HW on market value. The current offer must be withdrawn and a new offer made prior to filing an action. The Approval Process for acquisition of HW contaminated property (see Section 8.16.01.01) will be required when the net value of the property after deduction for hazardous waste cleanup is \$0 (or the cost of cleanup exceeds the fair market value of the property) and the parcel is to be presented to the CTC for approval of a Resolution of Necessity.

**8.16.01.01      Approval Process for Acquisition of Hazardous Waste Contaminated Property**

HQ approval of the Deputy Director, Project Development and the Deputy Director, Planning is required to purchase contaminated property when any of the following four conditions exists:

1. Remediation costs (excluding investigation costs) relative to the specific parcel are estimated to exceed \$200,000, and;
  - a) The estimated cost of remediation exceeds 50% of a parcel's appraised value compared to its uncontaminated value, or
  - b) The estimated cost of parcel remediation exceeds 10% of the total project costs (right of way and construction).
2. Contamination on the parcel has resulted in groundwater contamination requiring cleanup.
3. The net value of the property after the fair market value deduction for HW cleanup is \$0 (or the cost of cleanup exceeds the fair market value of the property) and the parcel is to be presented to the CTC for approval of a Resolution of Necessity.
4. The parcel was previously a mining and/or milling site with associated tailings, drainage, and/or processing residues residing on the parcel, or a mine site which is subject to local, state, and/or federal reclamation requirements.



The project manager, in coordination with District Right of Way, Project Development, and Legal, shall prepare the request for Headquarters approval.

Requests for approvals should be sent to HQ Hazardous Waste Management Office, Environmental program for coordination of the Deputies' response. A minimum of 30 days is needed to process the approval request.

#### **8.16.01.02**      **Permit to Enter**

A detailed visual examination of the property to collect data for risk analysis can legally be performed without the need for a signed Permit to Enter, providing the property owner concurs. A Permit to Enter will be required for any physical testing to be done by the State to determine HW contamination.

The statutory procedure for obtaining a voluntary permit for testing, etc., is set forth in CCP 1245.010 and 1245.060. The statutes speak of consent, notice and compensation to "the owner of the property." "Owner" should be given a broad interpretation to include the holder of any interest likely to be affected by the testing, including, for example, a tenant in possession. All parties with an interest in the property should sign the entry form, where possible.

The following guidelines and the Permit to Enter forms are based on consideration of the law and recent court decisions. Future legal actions may be compromised if required entry is not specific as to the proposed Department activity and specific as to location.

- A. Voluntary permit to allow State to perform test. See Exhibit 8-EX-13 for underground tank testing and Exhibit 8-EX-14 to be modified as necessary for other testing.
- B. Refusal of voluntary entry.
  - 1. Contact Legal Division for court order to enter property. This entry must be for specific testing and must identify exact locations for borings, etc.
  - 2. Any additional testing may necessitate further court orders which must also be obtained by the Legal Division, and must be specific and exact.
- C. Payment for Permit to Enter

Payment for a Permit to Enter is appropriate under the law. The amount to be paid will be determined in the same manner as if a nominal appraisal had been made and will be based on Section 8.01.26.00 for property rights valued at \$2,500 or less. Documentation for the "Nominal" valuation will be in accordance with Section 7.02.13.01. In the event consideration is likely to exceed \$2,500, a memorandum or concise narrative appraisal or "Waiver Valuation" will be necessary in accordance with the requirements set forth in Section 7.02.13.02.

#### **8.16.01.03**      **Certificate of Sufficiency and Hazardous Substances Disclosure Document**

R/W Engineering initiates the unsigned Certificate of Sufficiency upon submitting appraisal maps to Right of Way. Preliminary appraisal work may begin at this time, but appraisal reports cannot be approved until the Certificate of Sufficiency is completed and signed (see Appraisals Chapter 7.04.12.01 Hazardous Waste General).

The Senior Design and Project Engineer approves and issues the Certificate of Sufficiency to Right of Way using the standard format (Exhibit 6-EX-9) with approved Hazardous Substances Disclosure Document attached. Certificate of Sufficiency will include the parcel numbers of all properties contained in the appraisal report and the Hazardous Substances Disclosure Document (HSDD) will identify any Hazardous Substance consideration pertaining to those parcels.

- A. A new HSDD will be required whenever the area of right of way requirements is increased.
- B. Changes to right of way requirements will require a new Certificate of Sufficiency to be approved.

#### **8.16.01.04**      **Contaminated Properties**

Properties known or suspected to contain HW should be cleaned up by the grantor, to the satisfaction of Project Development, prior to the close of escrow. When this is not feasible or practical, the appropriate clause(s) listed below, depending on the situation, will then be included in the contract. These clauses are not to be revised without prior approval of HQ R/W and Legal. New or special clauses drafted in the District or by an owner must also have prior concurrence of HQ R/W and Legal prior to being incorporated into a settlement contract.

Underground tank removals must be given a high priority and completed well ahead of construction.

#### **8.16.02.00**      **Tested - No Contamination Found**

When Project Development has advised Right of Way to proceed with acquisition, because the property has been examined and/or tested and no contamination has been found, the following clause will be included in the contract:

“The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of HW which required mitigation under Federal or state law, the State may elect to recover its cleanup costs from those who caused or contributed to the contamination.”

#### **8.16.03.00**      **Tested - Contamination Found**

When contamination has been found, the amount of cleanup costs for which the grantor is liable, shall be deducted from the settlement, and one of the following clauses will be included in the Contract:

(Preferred)

“It is understood that the property being acquired has been used for \_\_\_\_\_ and that there is contamination of the soil and/or groundwater. Therefore funds in the amount of \$\_\_\_\_\_ have been withheld from the Grantor by the State to be used for cleanup costs. If actual cleanup costs exceed the deducted amount, the Grantor will reimburse State for the additional costs. If actual cleanup costs are less than the amount withheld from grantor, the excess withheld will be refunded to Grantor.”

(Alternate)

“It is understood that the property being acquired has been used for \_\_\_\_\_ and that there is contamination of the soil and/or groundwater. The acquisition costs of \$\_\_\_\_\_ reflect a deducted amount of \$\_\_\_\_\_ to be used for the anticipated costs of cleanup of such contamination.”

**8.16.04.00**      **Not Tested - Present Owner's Hazardous Material Use**

When Project Development has advised Right of Way to proceed with the acquisition and when the nature of the grantor's current or past operations and hazardous material use is known to all of the parties, the following clauses will be included in the Contract:

"The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of HW which requires mitigation under Federal or State law, the State may elect to recover its cleanup costs from those who caused or contributed to the contamination.

It is understood that the property being acquired has been used for \_\_\_\_\_, and that there is a possibility of \_\_\_\_\_ contamination of the soil. The seller of this property, \_\_\_\_\_ warrants that it will be responsible for the costs of any mitigation required by any regulatory agency as the consequence of \_\_\_\_\_ contamination of the soil and/or groundwater.\*

Seller hereby agrees to indemnify and hold harmless the State from any and all past, present and future claims, liabilities, obligations, or causes of action from any person or source arising out of or connected with hazardous materials on the property or HW on, in, or under the property which is the subject of this agreement."

\_\_\_\_\_  
\*Tailor for the particular acquisition.

**8.16.05.00**      **Not Tested - Known Past Hazardous Material Use**

When Project Development has advised Right of Way to proceed with the acquisition, and when the current use/operation has not been contaminated, and grantor says they have some knowledge that previous use/operations may have caused contamination, then the following clause will be included in the Contract:

"It is understood that the property being acquired in this transaction may contain HW requiring mitigation under State or Federal law to protect the public health. The acquisition costs reflect the fair market value of the property without the presence of contamination. If site cleanup is required on the property, the State may elect to exercise its right to pursue the responsible parties to recover cleanup costs from those who caused or contributed to the HW contamination on, in or under the property."

**8.16.06.00**      **Not Tested - Unknown Hazardous Material Use**

When Project Development has advised Right of Way to proceed with the acquisition, and the possibility of HW is suspected, but the grantor(s) indicate no knowledge of present or past operations which could have resulted in contamination, the following clauses will be included in the Contract:

“The seller hereby represents and warrants that during the period of Seller’s ownership of the property, there have been no disposals, releases or threatened releases of hazardous substances or HWs on, from, or under the property. Seller further represents and warrants that Seller has no knowledge of any disposal, release, or threatened release of hazardous substances or HWs, on, from, or under the property which may have occurred prior to Seller taking title to the property.

The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of HW which requires mitigation under Federal or State law, the State may elect to recover its cleanup costs from those who caused or contributed to the contamination.”

## **8.50.00.00 - MEMORANDUM OF SETTLEMENT**

### **8.50.01.00**      **General**

All transactions concluded by Contract, stipulated, contested or default judgment, Transfer of Control and Possession, or other special agreements must include a Memorandum of Settlement (MOS) Form RW 8-12. A short form MOS (Form RW 8-13) may be used provided the following conditions are unequivocally met: The cash settlement figure, including construction obligations, must be in accordance with the approved staff appraisal, no dollar limitation; the Deed and Contract must not contain any special clauses and title must not be taken subject to any encumbrance which would result in diminution of value of the property being acquired. The MOS shall be signed by the Acquisition Agent. Such signing will constitute the agent's assurance that the related transaction meets State and Federal requirements. The Senior Agent, Acquisition Branch, shall also sign the MOS. For those parcels with a value less than \$10,000, the Acquisition agent's supervisor, regardless of regular branch assignment, is authorized to approve a Memorandum of Settlement. Individual districts may find it internally desirable for others, i.e., Supervising R/W Agent, Acquisition Branch; District Directors, etc., to sign; however, as a minimum the memorandum shall be signed by the Acquisition Agent and the Senior Agent, Acquisition Branch, for parcels in excess of \$10,000. Scheduling procedures should be initiated as soon as the Contract, Amendment or other Agreement has been executed.

### **8.50.02.00**      **Preparation**

The MOS must be prepared in sufficient detail so anyone reviewing the transaction will fully understand all phases of the acquisition and reasons for special clauses or other provisions included in the Contract. There should be no doubt that all the elements of the transaction were given consideration and the Contract and MOS totally reflect the agreement between the State and the grantor.

All applicable information **must** be inserted. Under the **DOCUMENTS IN FILE** portion, the appropriate boxes must be checked and those documents **must** be in the file. A complete description on how to prepare the MOS is included with the Form.

### **8.50.03.00**      **Disposal Records**

The Acquisition Agent may need to complete two documents that provide information on property acquired.

The Inventory and Disposal Record (Form RW 12-1) is used for accountability of improvements and personal property purchased through Right of Way transactions, and to record the discharge of such accountability at the time of clearance. See Property Management Chapter (as written).

The Excess Land parcel Acquisition/Disposal Summary (Form RW 16-1) must be completed when real property is acquired in excess of the property needed for a project. Data in the acquisition appraisal is used to provide the inventory value and the acquisition file provides information for the remainder of the form. Parts I, II, and III of the form should be prepared at the time the MOS is prepared and is attached as one of the DOCUMENTS IN FILE. The document is attached to the MOS with a copy forwarded to the Excess Land Senior. The information is used to create the history of the parcel in the Excess Land Management System (ELMS).

The Agent will provide all the required information to complete these forms in the MOS. The Forms should be prepared at the time the MOS is prepared. The Registration Number must be shown on the first page of the MOS next to the "Inventory and Disposal Record" under the "DOCUMENTS IN FILE" section.

Improvements acquired through condemnation proceedings should be listed in the same manner as those acquired by negotiation. The form should be prepared when an Order for Possession or Right of Entry is secured. It shall be the responsibility of the Agent assigned to the case to provide the necessary information.

#### **8.50.04.00**      **Segregation of Acquisition Costs for Federal Reimbursement**

The Acquisition Branch must segregate acquisition costs into federally eligible and ineligible items through the use of a precoded Federal Participation Memorandum (Form RW 8-16). The source of this information is the settlement and the segregation of settlement amounts as set forth in the MOS. A Federal Participation Memorandum shall be completed on all transactions which create obligations of capital funds, e.g., Contract or other agreement.

The Federal Participation Memorandum is not an encumbering document. Capital funds are ordinarily encumbered by one or more of the following acquisition documents: Right of Way Contract; Amendment to Right of Way Contract; Judgment; Stipulation; Transfer of Control and Possession; Request for Transfer of Funds (to support an Order for Possession); Rental Agreement (Exhibit 8-EX-4), Agreement for Possession and Use, or other agreement by which Right of Way agrees to pay monies to an owner or lessee.

Right of Way is responsible for accurate segregation of acquisition costs. The Federal Participation Memorandum is forwarded by Planning and Management to Accounting who records the costs into the accounting system (TRAMS). Accounting is not to change any entry without prior consultation and approval of Right of Way. Ultimately, therefore, Right of Way has the sole and final responsibility to ensure that the capital costs are accurately charged or not charged to Federal funds.

A fully signed copy of the Federal Participation Memorandum shall be attached to and become part of every MOS in the Acquisition file.

The Acquisition section must review the signed copy from Accounting to determine its correctness. This is a vital step in the closing-of-the-loop process.

On an Order for Possession (OP), a "Request for Transfer of Funds" (Form RW 9-19) provides for the segregation of values for Accounting to charge or not charge Federal funds. This "Request" shall also be forwarded to Accounting through Planning and Management. A copy of the "Request" must be included in the acquisition file with a copy of the Accounting Weekly Report or equivalent. This will indicate if the deposit has been coded 6090 or 7090.

When settlement occurs after the taking of an OP, Accounting must be advised if there was a withdrawal of the deposit by the owner or if there is a need to "reverse" a charge to Federal funds made when the transfer of funds occurred. Since there is a potential for double billing of Federal funds, caution should be exercised.

Proper entries must be made on the center portion of the Federal Participation Memorandum.

#### **8.50.04.01**      **Federal Reimbursement Provisions**

These are in 23 CFR 710.203 and 710.309. Items with the greatest potential for erroneous claims and requiring careful review include the following:

- A. Federal authorization to proceed with right of way acquisition must be obtained prior to initiation of negotiations. If prior authorization is not obtained, all acquisition and related costs on that parcel are ineligible for federal reimbursement.
- B. Although the cost of purchasing an excess, uneconomic remainder is eligible for Federal participation, the Department has decided to no longer seek Federal participation. The cost of purchasing an "excess acquisition" is not Federally Participating. The Department will seek Federal participation for any and all damages attributed to an acquired excess parcel. (RWMC 132, December 22, 2003.)

Buildings or other improvements straddling the right-of-way line, e.g., garage, landscaping, swimming pool, etc., are eligible. Itemization will normally coincide with the segregation of values on the Appraisal Page. A pro rata segregation between right of way and excess, as in the appraisal, or other applicable basis, shall be used. If design changes either reduce or increase the area of excess subsequent to appraisal, adjustments must be made at time of settlement. If changes in the area of excess occur subsequent to acquisition, the Right of Way Engineering Branch notifies Excess Lands Branch, by memorandum, of these changes. Changes in the area of excess, of necessity, require adjustment of the Excess Land Inventory. Accounting is expected to make any necessary coding adjustments on an as-learned basis.

District Planning and Management has the responsibility to coordinate these Right of Way activities with R/W Accounting.

- C. Cost to acquire personal property is normally ineligible for Federal reimbursement. An exception is, if a landlord owns the personalty, e.g., furnished apartment, and if the furnishings are not acquired, a consequential eviction of tenants could occur by removal of the furniture by the landlord. Trade fixtures, equipment, machinery and other items installed for use on a property and within the right of way will be eligible if determined to be improvements pertaining to realty. There may be certain unique situations in which failure to acquire personal property may result in either relocation assistance benefits. In these unique situations, the District is cautioned that the prior concurrence of the FHWA shall be secured to preserve eligibility which would otherwise be lost. Mobile homes may be considered as either realty or personalty. If a mobile home cannot be relocated, i.e., not decent, safe, sanitary or not acceptable to another mobile home park, the only alternative is to offer to acquire and whether it is realty or personalty is not relevant, either as to the acquisition process or Federal eligibility. The FHWA has allowed participation in the cost of acquiring mobile homes which are in the right of way. If the acquisition involves a mobile home park and mobile homes are acquired which are on excess land, the guidelines in Section 8.06.22.00 should be reviewed to determine Federal eligibility. (See Section 7.03.04.00.)
- D. If legally compensable under State Law, Goodwill, interest and damages to remainders are eligible for Federal reimbursement unless otherwise noted.
- E. Care must be exercised when segregating values into eligible and ineligible categories when an administrative settlement has been made. If ineligible items are monetarily identified, they are not to be claimed. If, with other items, they were considered as potential contributions to an adverse verdict, then they may still be eligible provided the settlement is reasonable for the real property acquired. Eligibility for reimbursement is achieved when no item adversely effects the amount of the settlement for eligible interests in real property, and in the judgment of the District, the payment for the real property acquired is reasonable. In a partial acquisition, an administrative settlement amount may be prorated between land, improvements and damages unless the file reflects the increase was limited to any one of these components. If a portion of the property acquired in a partial acquisition is excess, an ineligible proration must be made. In a total acquisition without excess, prorate the increase between the components individually as in the partial acquisition, discussed above. In a total acquisition, with excess, prorate the administrative settlement increase between right of way and excess unless there is a clear and positive indication the increase is related to an improvement within the right of way.

- F. Certain costs encountered in the acquisition of a property are to be included as part of an administrative settlement. Specifically, these costs are: approved and authorized out-of-pocket expenses and rental payments as outlined in Section 8.01.30.00. These costs are eligible for Federal reimbursement and are to be listed as damages in a partial acquisition and included with the land payment in a total acquisition. If excess is acquired, prorate these costs between the right of way and the excess. State costs related to the trying of an eminent domain action, e.g., jury fees, reporter's transcript, filing fees, etc., while eligible for reimbursement have previously been entered into the accounting system (TRAMS) and should not be listed in the Federal Participation Memorandum. Litigation fees, determined by the court, to be paid to defendant's counsel are ineligible. Defendant's costs in trying an eminent domain action are not eligible except as noted in 23 CFR 710.203(b)(1). Prior to settlement, funds may have been advanced to an owner/lessee in order to perform rehabilitative work when a partial acquisition is to be made. These costs, as well as those for architectural drawings, are eligible provided the costs are not in conflict with concepts in an approved or authorized appraisal.
- G. The Appraisal Chapter provides guidelines for rounding of the appraised value of the required property. The practice is to round the total value of the required property.

In the settlement column of the MOS, the components (land, improvements, etc.) shall be rounded to the extent that their total will equal the rounded total of the appraisal or the settlement. As in any judgmental decision, reasonable care should be used, i.e., when excess is being acquired, the rounding should be reasonable so that Federal funds are not charged inappropriately.

The rounded components in the settlement column of the MOS shall be used in the preparation of the Federal Participation Memo. This procedure will be of significant assistance to R/W Accounting.

- H. Care must be exercised to avoid charging Federal funds prematurely. A portion of a settlement, normally eligible, but not to be paid until a later time, is not to be charged to Federal funds until the payment is made. The typical example is when a portion of the payment is withheld until the grantor performs an act, e.g., removes an improvement, cuts and caps a waterline, etc. When funds are withheld, the Federal Participation Memorandum shall reflect this by inserting the withheld amount in the FAE 8 - Suspense column, and on the appropriate line, i.e., Improvements. The Withheld Funds box at the center of the form is marked "Yes" and the balance of the line completed. Coding of withheld transactions to FAE 8 - Eligibility Not Determined or Suspense will prevent charges to bill out for federal reimbursement.

When the condition that required the withholding of funds has been eliminated or complied with, Acquisition notifies R/W Accounting by submitting a supplemental Federal Participation Memorandum (RW 8-16) and a completed Acquisition Invoice (RW 8-17). The Federal Participation Memorandum must clearly indicate the adjustment to be made, (i.e., adjust the withheld amount from FAE 8 to charge either FAE 6 or FAE 7 depending on federal eligibility). Additionally, include a statement in the Explanation Section of the form that the terms of the contract have been complied with (e.g., premises have been inspected and work performed).

Care should be exercised to ensure proper scheduling and payment of the withheld amount, and appropriate charging of the expenditure to avoid a double billing situation. It is advised that the original RW 8-16 also be attached with the payment request package for the withheld amount.



- I. Parcels acquired on either a hardship or protection basis, under a Federal-Aid Stage 1 Authorization, have specific eligibility requirements for Federal participation. See Section 3.05.05.02 Stage 1 Authorization - Hardship and Protection and Sections 5.03.00.00 – Hardship and 5.04.00.00 – Protection.

After the selection of a particular location, 23 CFR Section 630.106 (3) & (4) (d) allows authorization to proceed with R/W acquisition in hardship and protective buying situations. At the time of FHWA authorization, the Federal government does not provide federal funds for the hardship and protective acquisitions.

However, costs of approved hardship and/or protection parcels are eligible for future federal reimbursement. Therefore, R/W transactions for hardship and protection acquisitions must be coded as “eligible for federal aid,” that is with FAE Code 6. The Accounting System (TRAMS) must record these hardship and protection acquisition costs as federally eligible so that the Current Billing and Reporting System (CBARS) (with special tracking of these Stage 1 Authorized R/W projects) may bill FHWA for future federal reimbursement.

- J. If a construction contract obligation has been included in either the construction plans or the appraisal, or both, and the grantor requests payment in lieu of the State’s contractor performing the work, as evidenced by a clause in the Contract, then such payment is to be listed under damages.

Conversely, a proposed damage payment may have been changed to a construction contract obligation. This change must also have been covered by a Contract clause, with appropriate explanation in the MOS and eliminating the applicable portion of the payment from the Federal Participation memorandum.

The Contract and MOS shall each reflect that the pertinent item is covered by either payment or construction contract obligation, but not both. The Federal Participation Memorandum will be limited to payments. The Agent must ensure that whenever any construction contract obligation is covered by payment, such obligation is eliminated as work to be performed by the contractor. If the acquisition is on a project which is federally participating but Right of Way costs are not, then any Right of Way obligation should not be made a construction contract obligation without an offset or credit to Federal funds.

- K. If an exchange is involved, the gross cost to acquire the required property is to be reflected in the Federal Participation Memorandum, not as offset by the credit received for the exchanged property.
- L. Region/District Right of Way has the option to review how capital and support costs actually appear in the accounting system. The Right of Way History Report, FIS 867, will show the costs involved in acquiring a parcel and whether these costs have been coded participating or nonparticipating. In the event there might be some concern whether Federal funds have been charged, the history report will provide the answer.

**NOTES:**

## **8.69.00.00 - RAILROADS**

### **8.69.01.00**      **Railroad Function**

The clearance of construction projects that involve railroads consists of two separate but closely connected functions:

- Acquisition of railroad property rights.
- Obtaining an agreement with the railroad for physical construction of the project.

This section covers both aspects of the Railroad involvement.

Railroad clearance is a joint effort between the District and HQ R/W Office of Project Delivery. A project can be advertised only when both a R/W Certification and a railroad clearance letter have been issued. A railroad clearance letter can be issued after completion of the Construction and Maintenance Agreement or Service Contract and all railroad required property rights are under the Department's control by Right of Entry, R/W Contract, etc.

The HQ R/W Office of Project Delivery obtains Legal approval for Construction and Maintenance Agreements, Service Contracts, and "Relations with Railroads" clauses. These subjects are covered in the Railroad Syllabus.

If project deadlines are to be met, district railroad personnel MUST:

- Know the contents of this Chapter.
- Know the contents of the Railroad Syllabus.
- Fully inform their counterparts in the HQ R/W Office of Project Delivery of all correspondence and telephone contacts as problems arise.

### **8.69.02.00**      **Federal-Aid Requirements**

Federal-aid requirements for railroad involvement are contained in 23 CFR 646.216. Full compliance is required to ensure federal participation where applicable. When questions arise, HQ R/W is to be consulted and prior FHWA concurrence obtained.

### **8.69.03.00**      **District Responsibility**

The DDC-R/W shall designate a R/W employee, who shall have a sufficient depth of acquisition experience and be at a minimum Associate level, with full responsibility for railroad activities leading to clearance of projects for advertising. The designee, referred to as the District Railroad Agent, shall be responsible for performance of the duties as described below.

#### **8.69.03.01**      **Determination of Railroad Involvement**

The Railroad Agent shall make a positive determination on whether or not there is railroad involvement on a project as early as possible, but no later than the Project Report stage.

Projects planning cost estimates are categorized as: (1) Project Feasibility; (2) PSR; (3) Draft PR; and (4) PR. At the feasibility stage, the Right of Way Branch will normally complete the first sheet of the Right of Way Data Sheet.

The Railroad Agent shall provide the information requested on the R/W Data Sheet attachment to Project Reports. This information includes:

- A determination of whether railroad facilities or rights of way are affected, and if so, the type of railroad involvement.
- When a railroad branch line or spur is affected, a determination if there may be a more cost-effective solution to the project than constructing a facility to preserve the rail service.

Items to be considered and documented on the R/W Data Sheet include:

- Number of train movements per day or week and the number of businesses and industries involved for all spur tracks and branch lines that terminate within the immediate vicinity of the project.
- Rough cost estimates to buy out businesses and industries, including an estimate of relocation costs. This information is obtained from the R/W Estimating Section.
- Payment of damages if alternate forms of service are feasible, such as truck or team track.
- Estimated cost to construct facilities to perpetuate existing branch line or spur. This information is obtained from Project Development.
- Number of oversized and overweight loads incapable of being hauled over highways.
- Estimate need for, and cost of, Railroad Flagging for design and environmental studies.
- Estimated construction costs of work to be performed by the railroad. The Railroad Agent derives preliminary cost estimates from historical cost data. Final Estimates will be provided by the railroad after final plan review.

#### **8.69.03.02**      **Acquisition and Document Preparation**

The District Railroad Agent shall also:

- Acquire railroad parcels.
- Prepare R/W Contracts.
- Prepare Construction and Maintenance Agreements, Service Contracts, "Relations with Railroad," and other related documents.
- Initiate condemnation procedures (see Section 9.02.04.00).
- Prepare MOS (Form RW 8-30).
- Clear all interests affecting railroad parcels as required.
- Request and process Rights of Entry. Briefly inform railroad of the need and use of property.
- Prepare rebuttals in response to FHWA citations on railroad parcels.
- Coordinate with Project Development to prepare Exhibits A, B, and C for the PUC application for grade crossings and separations. (See Exhibit 8-EX-84 and the Railroad Syllabus.)
- Maintain status records for all railroad projects.
- Act as coordinator of the Railroad Advisory Team (see Section 8.69.11.00).
- Certify that required railroad property has been acquired, covered by Right of Entry or Order of Possession.
- Provide railroad clearance letter for projects delegated by HQ R/W Office of Project Delivery.

### **8.69.03.03**      **Document Review**

The District Railroad Agent shall also:

- Provide for HQ R/W Office of Project Delivery review and approval of Construction and Maintenance Agreements and Service Contracts, and ensure:
  - Conformity with what the district and railroad have agreed upon.
  - Payment or credit is not duplicated in a R/W Contract, Service Contract, or Construction and Maintenance Agreement.
- Review and recommend for HQ R/W Office of Project Delivery approval Nonstandard Railroad Indentures, Deeds, and Rights of Entry.
- Review and recommend for HQ R/W Office of Project Delivery approval of settlements that exceed the Department's approved appraisal.
- Review and obtain district and railroad approval, if necessary, of "Relations with Railroad" clauses and advise HQ R/W Office of Project Delivery of district approval.
- Provide the HQ R/W Office of Project Delivery with written confirmation of compliance with these document review requirements.

### **8.69.03.04**      **Coordination Activities**

On state projects, the District Railroad Agent shall be the sole coordinator and shall handle all district contacts with railroad companies.

- Furnish the railroad with maps and plans during project development phase and request an estimate of cost of the work to be performed by railroad.
- Furnish the railroad with maps and legal descriptions of proposed right of way acquisitions affecting railroad property during R/W phase for their use in preparing concurrent appraisals.
- Send copies of the Contract Special Provisions to the involved railroad as soon as such copies are available in final form.
- Maintain file of all project-related correspondence and route copies to interested parties, including railroad, as necessary.
- Arrange and attend office and field reviews between district and railroad personnel.
- Provide services, information, and aid to all district branches, HQ R/W Office of Project Delivery, and Office of Project Development.
- Act as liaison agent for district with PUC, railroads, Office of Project Development, and HQ R/W Office of Project Delivery.
- Advise supervisor of project status and any potential delays.
- Advise district Office of Project Development and HQ R/W Office of Project Delivery of potential railroad problems.
- Inspect or arrange for inspection of grade crossings upon completion of construction and determine date crossing was completed and opened to the public. Transmit this information in a final report to the HQ R/W Office of Project Delivery together with photographs of the crossing.
- Furnish information to HQ Division of Rail about projects for the recommended grade crossing list.

- Obtain PUC maps required for grade separation structures.
- Obtain exhibits for Legal's PUC application.
- Regions/Districts have the authority to make application for a new or renewal of a railroad franchise or for rearrangement or construction of rail facilities where an existing or contemplated state highway or freeway is affected, or likely to be affected, by the continued maintenance, rearrangement, or construction of the rail facility. Regions/Districts will handle the matter on the local level with the appropriate local authority.

The District Railroad Agent's involvement in local assistance projects will be in accordance with district procedure.

#### **8.69.04.00      Responsibility of HQ R/W Office of Project Delivery**

The role of the HQ R/W Office of Project Delivery is to assist the districts and various Headquarters offices in railroad matters, and clear all projects with railroad structures involvement for advertising. Certain levels of project clearance may be delegated to the Region or District (see R/W Delegation Matrix).

Duties involve some or all of the following activities:

- Provide liaison between the various railroad companies and state and federal agencies regarding engineering matters and specific issues affecting the railroads.
- Provide liaison between district and Headquarters units.
- Serve as a member of the Railroad Advisory Team on projects with complex railroad involvement.
- Obtain Legal review of Construction and Maintenance Agreements, Service Contracts, R/W Agreements, and other related documents.
- Develop standard procedures for property acquisitions from the various railroad companies.
- Standardize "Relations with Railroad" clauses for Statewide use.
- Maintain standard indentures from railroad companies.
- Negotiate directly with railroad companies on specific issues of statewide significance.
- Assist the districts in preparing complex R/W Contracts and Agreements when requested.
- Review (for conformity with established procedures and delegated authority) and approve all nonstandard railroad property acquisition transactions.
- Process railroad invoices for Service Contracts and supplements thereto for construction work performed by railroad.
- Determine apportionment of costs.
- Determine state's liability for extraordinary maintenance.
- Review documents and agreements for conformance with FHWA rules and regulations and obtain FHWA approvals as required.
- Appear at PUC hearings as adviser or expert witness in cooperation with Legal.
- Request Extensions to expiration dates as authorized by PUC decisions as necessary.
- Post-audit district approved standard railroad property acquisition.

- Provide post audit review to ensure conformity of Construction and Maintenance Agreements and supplements with R/W Appraisal and Contract obligations.
- Prepare and update the Railroad Syllabus covering matters required for railroad negotiations and project clearance.

#### **8.69.05.00**      **Role of the Public Utilities Commission (PUC)**

Railroads are common carriers that fall under the jurisdiction of the PUC. The powers and jurisdiction of the PUC are contained in the Public Utilities Code, which was adopted in 1951 (STATS 1951, Chapter 764 as amended) pursuant to the Constitutional authority found in Sections 22 and 23, Article 12 of the California Constitution. Section 23 provides in part:

*“The Railroad (now Public Utilities) Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California... as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution.”*

#### **8.69.06.00**      **Powers of the PUC**

Public Utilities Code Sections 1201 through 1220 are the laws that generally have the greatest effect upon the Department’s program. Section 1201 provides:

*“No public road, highway or street shall be constructed across the tracks of any railroad corporation at grade...without having first secured the permission of the Commission.”*

Section 1202 provides that the PUC has the exclusive right:

*“...to determine and prescribe, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing...of a publicly used road or highway by a railroad or vice versa.”*

*“...alter, relocate or abolish by physical closing any such crossing heretofore or hereafter established.”*

*“...require...a separation of grades at any such crossing...and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation or abolition of such crossings or the separation of such grades shall be divided between the railroad...and the State....”*

#### **8.69.07.00**      **Role of the Surface Transportation Board (STB)**

The Surface Transportation Board (Board) was established on January 1, 1996 as a decisionally independent, bipartisan, adjudicatory body organizationally housed within the U.S. Department of Transportation (DOT), with jurisdiction over certain surface transportation economic regulatory matters. It was created by a December 29, 1995 Act of Congress (49 USC 10101 et seq.) known as the ICC Termination Act of 1995 (ICCTA). The ICCTA terminated the Interstate Commerce Commission (ICC) effective December 31, 1995; eliminated various functions previously performed by the ICC; transferred licensing and certain nonlicensing motor carrier functions to the Federal Highway Administration within DOT; and transferred remaining rail and nonrail functions to the Board.

#### **8.69.08.00**      **Powers of the STB**

49 USC 10903 et seq., governs abandonment of rail lines and discontinuance of rail service by common carriers. Section 10903(d) provides that no line of railroad may be abandoned and no rail service discontinued unless the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

Part 1152 contains regulations governing abandonment of, and discontinuance of service over, rail lines. This part also sets forth procedures for providing financial assistance to assure continued rail freight service under 49 USC 10904, for acquiring rail lines for alternate public use under 49 USC 10905, and for acquiring or using a rail right-of-way for interim trail use and rail banking.

#### **8.69.09.00**      **Route Location and Design**

The Railroad Agent shall advise their supervisor of potential railroad problems in the route location and planning phases. The Agent may arrange for joint studies in the project development stage to obtain a route location and design that is economical and compatible with the railroad's operational needs and requirements.

#### **8.69.10.00**      **Railroad Advisory Team Concept**

A Railroad Advisory Team may be formed to assist the district in developing projects that require complex railroad involvement. The team may be comprised of representatives of the HQ Division of Engineering Services - Structures Branch, Legal Division, HQ R/W, and the district, and can be convened upon the district's request.

#### **8.69.11.00**      **Project Certification - Railroads**

Project construction advertising requires two separate railroad clearances—the R/W Certification and the Railroad Clearance Letter.

The Railroad Agent is responsible for the railroad clearance statement for R/W certification for a project. The Railroad Agent certifies to the District Certification Section that all railroad property required for the project has been acquired by the state, or is covered by a Right of Entry or a Resolution of Necessity, and that a railroad clearance memorandum has or has not been received from HQ R/W Office of Project Delivery.

Clearance of matters concerning railroad operations also rests with the Railroad Agent. Railroad Agents are responsible for preparing "Relations with Railroads" clauses for inclusion in the Contract Special Provisions, arranging for the state to execute the Construction and Maintenance Agreement or Service Contract, and coordinates obtaining PUC order or any other agreement required to clear the project.

When the above matters are cleared, HQ R/W Office of Project Delivery issues a railroad clearance memorandum to the Office of Office Engineer with a copy to the Railroad Agent. Some types of project clearance letters may be delegated to the Region or District Railroad Agent.

The Railroad Agent shall immediately notify District Project Control so the Status of Projects can be updated.

It is mandatory that the clearance information be entered in IRWS on the Railroad Project screen (I-2) and in PMCS on both the EVNT screen and the AGRE screen.



#### **8.69.12.00 Liaison Procedures with Railroad Companies**

The Railroad Agent shall establish and maintain channels of communication with railroad companies in the district. The Railroad Agent will arrange for the exchange of project study information so that future highway construction can be achieved in the most economical manner and with the least amount of disruption to the railroad. The required procedure is shown in the table below.

<b>LIAISON PROCEDURES</b>	
<b>Phase</b>	<b>Explanation</b>
Public Hearings	All railroads that are affected, or may be affected, shall be notified in writing of the time and place of public hearings to be held in connection with highway locations.
Route Maps	When a route is adopted by the CTC, a copy of the adopted route map shall be mailed to each affected railroad. Similarly, the railroad should be notified of any route that has been deleted from the highway system whenever it affects their railroad or railroad property.
Preliminary Design Plans	When preliminary plans are sufficiently advanced to determine what railroad facilities may be involved, the Railroad Agent shall forward them to the affected railroad with a request that the railroad comment or prepare preliminary relocation plans, if required. Copies of the correspondence shall be sent to the HQ R/W Office of Project Delivery. Additional information, including any design revisions, and appraisal maps should be sent to the railroad as it becomes available.
Coordination/ Railroad Advisory Team	A project that requires a major rearrangement or relocation of railroad facilities should be discussed early in the planning stages by coordinating a Railroad Advisory Team meeting. Representatives of the affected railroad, Design, HQ Structures, Legal, and HQ R/W Office of Project Delivery should be present to ensure the most practical and economical alternatives can be determined, consistent with sound highway and railroad design standards and practices.
Approved Plans	The Railroad Agent shall obtain railroad's approval of bridge plans.
Construction Date	The Railroad Agent shall notify each affected railroad in writing of the bid opening date for a specific highway project.

#### **8.69.13.00 Steps in a Railroad Involvement**

- Prior to route adoption, analyze route with respect to railroad involvement.
- Prepare notification of public hearings. Furnish adopted route maps to railroad.
- Send preliminary design plan to railroad.
- Railroad approves bridge general plans.
- Railroad approves bridge contract plans and contract specials.
- District Design prepares Certificate of Sufficiency of Right of Way requirements for bridge and roadway work and attaches Hazardous Substances Disclosure Document prepared by Environmental.
- R/W appraisal prepared.
- Railroad approves legal descriptions for right of way requirements.
- Preparation of agreements, special provisions, and PUC Exhibits.
- Legal Division files PUC Exhibit.
- Right of Entry obtained, if necessary.
- Execution of agreement, deeds, and R/W Contract.
- HQ R/W Office of Project Delivery clears project for advertising, unless delegated.

#### **8.69.14.00**      **Property Classifications**

##### **8.69.14.01**      **Operating Property - Definition**

Since all railroads do not use the same criteria in classifying property and facilities as operating or nonoperating, the districts should exercise caution in making such judgments. Consultation with HQ R/W is advisable at the appraisal stage if items affected by the highway construction become questionable as to operating or nonoperating property.

In general, the term “operating property” is used to describe those railroad facilities and property that are essential to conduct the railroad transportation business and without which railroad service could not be provided to users. An example is the roadbed. Under some circumstances, however, certain railroad facilities such as warehouses, depots, and freight forwarding facilities may be classified as operating property.

##### **8.69.14.02**      **Nonoperating Property - Definition**

“Nonoperating property” is property that is not essential to railroad operating requirements or property that is vested in a railroad land company.

##### **8.69.14.03**      **Operating Property - Degree of Title**

Although easement title is the usual title the state acquires when railroad operating property is affected by a highway project, fee title may be obtained.

##### **8.69.14.04**      **Nonoperating Property - Degree of Title**

The same degree of title should be obtained as is acquired for the balance of the project. In most cases, acquisition of fee title is advisable.

#### **8.69.15.00**      **Acquisition Procedures**

##### **8.69.15.01**      **R/W Maps and Legal Descriptions**

To expedite acquisition of both operating and nonoperating railroad properties, R/W has agreed to furnish appraisal maps to the railroad as soon as possible after environmental clearance. To implement this, R/W Engineering shall furnish the necessary number of appraisal maps (and legal descriptions if available) to the Railroad Agent at the same time it sends the appraisal maps to the Appraisal Branch. On maps furnished to the Railroad Agent, only the railroad parcel(s) should be colored.

The Railroad Agent shall forward the maps (and legal descriptions if available) to the railroad so the district and the railroad can begin their appraisals concurrently. The legal descriptions must go to the railroad as soon as possible for its review and comment. The Railroad Agent’s letter of transmittal to the railroad should provide an estimated completion date for the staff appraisal.

##### **8.69.15.02**      **Contract and Offer**

A R/W offer must be sent to the affected railroad immediately after the appraisal is approved. The transmittal shall contain the deed or indenture, R/W Contract if applicable, and the appraisal summary statement (Exhibit 8-EX-15A) with specific comparables that were used, if any. A right of way contract will be used for Fee acquisitions. Railroads typically will not use right of way contracts for Easements. Ideally, the property transaction should be agreed to between the parties before the Construction and Maintenance Agreement or Service Contract is fully executed by the railroad. Some railroads may also require the Draft PUC Application be sent for their review prior to executing the Construction and Maintenance Agreement.

#### **8.69.15.03**      **Mile Post**

Highway projects should be identified with the railroad line designation and mile post, if available, or railroad station when corresponding with the railroad on new projects. After the railroad establishes a file number, that number shall be used on all future correspondence. If the proposed work is at an existing grade crossing, the PUC grade crossing number shall be used on the correspondence.

#### **8.69.15.04**      **Railroad Contacts**

HQ R/W will periodically publish a list of railroad contacts for the Railroad Agent's reference. Each Agent is responsible for notifying HQ R/W as changes occur to the railroads operating within their district.

#### **8.69.15.05**      **Title Reports for Exchanges**

In transactions involving exchanges of properties with a railroad, a copy of the preliminary title report or policy of final title covering the property to be conveyed to railroad shall be furnished to the railroad if it is available.

#### **8.69.16.00**      **Railroad Payments**

##### **8.69.16.01**      **Minimum Payment of \$1,000**

In transactions with railroads where the state is to receive a Grant or Quitclaim Deed or an easement, it is permissible to make a minimum payment of \$1,000 in addition to any processing fee required by the Railroad. This minimum payment is applicable only when the appraised value of the property to be acquired is Nominal.

#### **8.69.16.02**      **Right of Entry - Interest Payment**

Although no interest may be paid on a Right of Entry obtained for temporary easement, payment of interest is permissible where the state ultimately is to obtain a permanent right from the railroad (see Section 8.69.24.01 for distinction). In this case, interest is paid from the date of execution by the state until 90 days after submission of a mutually satisfactory R/W agreement to the railroad.

#### **8.69.16.03**      **Railroad's Lessees**

The railroads generally will not clear lessees' interests, but will insist that the state reach separate agreements with lessees before settlement with the state.

To ensure that payment is not made to a lessee for improvements for which the railroad claims ownership, the following procedure should be followed:

- Discuss the lessee's ownership of improvements, if any, located within the area to be acquired.
- Confirm ownership of the improvements with the railroad in writing.
- Once the railroad's concurrence has been obtained, commence negotiations with the lessee to acquire the affected improvements.

#### **8.69.16.04**      **Purchase of Track**

The purchase of existing railroad track is prohibited. Any deviation from this procedure must have HQ R/W's prior approval.

**8.69.16.05**      **Transverse Crossings**

Payment of consideration will not be made for transverse crossing easements on railroad operating property, except as provided in Appraisal Section 7.13.60.01-A.1.d. A reasonable processing fee may be paid in addition to any Nominal compensation.

**8.69.17.00**      **R/W Agreements and Contract Clauses with Railroads**

The clauses in the table entitled “R/W Railroad Agreements and Contract Clauses” are used in transactions with the railroad companies. The Department has carefully considered the phraseology of the clauses and they shall not be altered. If, in the district’s opinion, situations arise that require modification of these clauses or use of special clauses, the district must submit the contract to HQ R/W for prior approval.

<b>R/W RAILROAD AGREEMENTS AND CONTRACT CLAUSES</b>		
<b>Type</b>	<b>Explanation</b>	<b>Clause</b>
Mortgage Release-Reconveyance	When acquiring fee title, the railroad shall furnish a reconveyance or release of mortgage prior to close of escrow.	Railroad, at no expense to the State, expressly covenants to cause any or all mortgages or Deeds of Trust, including modifications, amendments and supplements thereto, which affect the property to be conveyed in this transaction to be released or reconveyed and recorded within 90 days from the date of delivery to the State of the Grant Deed or Quitclaim Deed.
Subordination	If easement rights only are being acquired and if consideration paid for the easement is \$2,500 or more, the R/W Agreement should contain the following clause obligating the railroad to furnish a subordination thereof to the State.	In consideration of the State’s waiving a Release of Mortgage, the undersigned Grantor covenants and agrees to have any Mortgage, Indenture, or Deeds of Trust subordinated to the rights being acquired in this transaction and provide evidence of said subordination within one year from the date of close of escrow.
Indemnification Clause	The following clause is used in easement acquisitions where the amount of settlement is less than \$2,500. This clause is not used when a transverse crossing easement is being acquired without monetary consideration. For consideration over \$2,500, see “Subordination” above.	In consideration of the State waiving a release of mortgage, the undersigned grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The grantor’s obligation herein to indemnify the State shall not exceed the amount paid to the grantor under this Agreement.
Modification of Clause 1, R/W Contract Form RW 8-3	In all transactions, it is permissible to delete the following portion of Clause 1 of the standard R/W Contract.	“...or on account of the location, grade, or construction of the proposed public improvement.”
Real Property Tax Clause	The following clause is used in all transactions.	The _____ Railway Company agrees that it has paid or will pay all current taxes and it will make its own arrangements as it sees fit regarding adjustment or cancellation of taxes on property which is the subject of conveyance to the State of California in this transaction.

#### **8.69.18.00**      **Deed Clauses with Railroads**

The deed clauses listed in the table entitled “Railroad Deed Clauses” have been standardized for use with the railroads. Prior HQ R/W approval is required if it is necessary to revise any of these standard deed clauses. The reason for the revision should be set forth in the MOS with a copy of the deed attached.

<b>RAILROAD DEED CLAUSES</b>		
<b>Type</b>	<b>Explanation</b>	<b>Clause</b>
Grade Separation Access Rights Clause (See Section 6.06.05.00-.01)	Use the following Deed clause in acquiring railroad property rights for grade separation projects.	This conveyance is made for the purpose of a highway grade separation and the Railroad hereby releases and relinquishes to the State any and all abutters’ rights of access in and to the traveled way within the limits of the property herein above described.
DM-4 Modification	Use the following clause where the State accepts a Grant Deed or Quitclaim Deed and the mineral or oil rights are excepted by the owner or some other party having an interest in these rights.	Excepting and reserving, however, unto the Grantor, its successors and assigns, forever, the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said land or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas, and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right of ingress and egress beneath the surface of said land to explore for, extract, mine and remove the same, and to make such use of the said land beneath the surface as is necessary or useful in connection therewith, which use may include lateral or slant drilling, boring, digging or sinking of wells, shafts, or tunnels; provided, however, that Grantor, its successors, or assigns, shall not drill, dig, or mine through the surface of said land in the exercise of said rights, and shall not disturb the surface of said land or otherwise develop the same in such manner as to endanger the safety of any highway that may be constructed on said land; provided, also, that no lapse of time in the exercise of such reserved rights shall be deemed to be an abandonment thereof nor a vestiture of any adverse right in the Grantee or its assigns.

RAILROAD DEED CLAUSES (Continued)		
Type	Explanation	Clause
DM-1 Modification	<p>Delete the following portion of the DM-1 Clause from Form RW 6-1(C), Grant Deed (Corporation with DM-1 Clause).</p> <p>In lieu of deleting the aforementioned portion of the DM-1 Clause, the district may use Form RW 6-1(D), Grant Deed (Corporation without DM-1 Clause).</p>	<p>“...and the Grantor for itself, its successor and assigns hereby waives any claims for any and all damages to Grantor’s remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said highway.”</p>
Modified DM-4 Clause	<p>Include the following clause where the State accepts a Grant Deed or Quitclaim Deed and the railroad reserves the oil, gas, and mineral rights.</p>	<p>Railroad expressly reserves and excepts all minerals contained in the above-described land, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, provided that Railroad shall not have the right to go upon or use the surface of said land or the upper 100 feet of the subsurface, or any part thereof, for the purpose of drilling for, mining, or otherwise removing, any of said minerals. Railroad may, however, and hereby reserves the right to remove any of said minerals from said land by means of wells, shafts, tunnels, or other means of access to said minerals which may be constructed, drilled, or dug from other land, provided that the exercise of such rights by Railroad shall in no way interfere with or impair the use of the surface of the land hereby conveyed or of any improvements thereon.</p>
Easement Reversion and Structure Removal Provisions for Separated Grade Crossings	<p>Provision for removal of improvements constructed by the State in the event highway use ceases.</p>	<p>If the land described in Exhibit “A” or any portion thereof, shall cease to be for highway purposes, then and in that event, the right hereby given shall as to such portion or portions, as the case may be, thereupon cease and terminate and GRANTOR, its successors and assigns, shall resume possession thereof the same as though this instrument had not been executed and any structure placed on the land described in Exhibit “A” by the GRANTEE will be removed by and at the expense of the GRANTEE, subject to appropriation of funds by the California Transportation Commission.</p>

#### **8.69.19.00**      **Railroad Indentures (Easement)**

#### **8.69.19.01**      **Standards of Acceptability**

When acquiring easements, the district should examine the deeds or documents by which the railroad obtained title, if practical, to determine the railroad's present and future rights of usage, such as the right to construct, reconstruct, or use other facilities on their right of way.

Easements from the railroads differ from easements received from other property owners. In some instances, the railroads may insert clauses that define the obligations and responsibilities of the two parties to the transaction.

Upon receipt of an easement, the district shall review it for conformance with the provisions of this section.

Extreme care must be exercised to ensure that an easement does not cover an area used by the public but for which no recorded document exists.

Easements should contain a provision that requires the railroad to obtain an encroachment permit for record purposes only when it plans to work within the area described in the easement.

HQ R/W should be contacted concerning any particular problem that may arise. When an easement requires review by the Department, the district will transmit the easement to HQ R/W with its recommendations or comments.

While it is not possible to list every type of obligation that would be unacceptable in an easement, those listed in the following table are some of the objectionable clauses the railroad may ask to include in an easement.

<b>OBJECTIONABLE CLAUSES</b>
<ul style="list-style-type: none"><li>• Generally, easements should not call for any continuing state obligations.</li><li>• There should be no obligations to alter, reconstruct or remove a facility at the request of the railroad, its lessees, subleases or licensees except as provided for in the standard indentures.</li><li>• There should be no obligation for the payment of funds for railroad work in the easement indenture. The indenture may make reference to the Construction and Maintenance Agreement or Service Contract which will cover work performed by the railroad.</li><li>• The state's construction should not be subject to approval by the railroad. Clauses may be inserted, however, that provide that the railroad may inspect the work and that they have the right to approve plans and specifications covering the work to be performed near the railroad tracks.</li><li>• There should be no provision allowing the railroad to supervise, direct, or change any of the methods or procedures of construction.</li><li>• There should be no provision allowing the railroad to do work if, in the railroad's opinion, the state does not perform the work satisfactorily.</li><li>• Easements should not contain a provision for a reversion of state's title based on non-use of the highway or highway facilities. The railroads will sometimes insert a clause that provides that title shall revert if the facility ceases to be a highway. The only way a facility can cease to be a highway is by the CTC's action. Such terminology is acceptable when the state has an easement, since subsequent abandonment of the highway by the CTC would cause a reversion to the owner of the underlying fee. However, terminology in connection with a reversion, such as "ceases to be used as a highway," is unacceptable since it calls for a reversion based on non-use.</li><li>• Title should not be taken subject to subsequent leases, licenses, encumbrances, etc. Easements, however, usually provide that the state is to take title subject to prior leases, licenses, encumbrances, etc.</li></ul>

#### **8.69.19.02**      **Easements for Highway Widening**

When an existing highway right of way was acquired through prescription, easements for the widening of the highway right of way (grade crossing) should not describe the existing right of way. If the state accepts an easement that describes the existing prescriptive right of way plus the widened portion, this might be interpreted as an abandonment of the original highway. In that case, the conditions and covenants contained in the document would apply to both the existing highway and the widened portion. Since the state's title by prescription may be less restrictive than the new rights obtained, this might mean the state may be divesting itself of rights previously acquired by prescription.

On a widening of an existing highway, the state may accept a description covering both the existing and the widened portion if the state's original rights were acquired by recorded document. The effect of accepting a document covering both portions will not vitiate the state's original rights since these rights are of record and may be disposed of only through the CTC's action.

#### **8.69.19.03**      **Drainage Easements**

Where the state is obligated to relocate an existing drainage facility under the railroad tracks, the railroad is responsible for owning and maintaining the facility if the construction is nothing more than a substitute facility and there is no additional water being introduced or no appreciable change in water velocity. No easement is required in this case, and the proposed construction may be covered by a Right of Entry or in the Construction and Maintenance Agreement or Service Contract.

In certain cases, the railroad may be obligated to replace the existing drainage facility at its own expense. To avoid delays, the district should contact HQ R/W as soon as the right of way requirements are determined so a legal determination can be obtained.

#### **8.69.19.04**      **Easements in Limited Vertical Dimension (Aerial Easements)**

See Section 8.01.30.00 for restrictive conditions that must be included in Aerial Easements. HQ R/W must be consulted about any deviations in wording to be used, and FHWA concurrence is required.

#### **8.69.19.05**      **Standard Indentures**

Standard indentures can be generated over time for individual railroads; however, all railroads typically use their own specific clauses and are subject to frequent changes. Therefore, Indentures must be submitted to HQ R/W to obtain Legal review and approval for use.

HQ R/W may be contacted to obtain information on current indentures approved for use.

#### **8.69.19.06**      **License for Minor Installations on Right of Way**

A License may be used whenever it is necessary to install minor improvements on Railroad right of way for the State's benefit. If the facility is such that it must remain in place, a permanent right must be obtained. If in doubt, check with HQ R/W.



#### **8.69.20.00**      **Drilling Permits**

Unless directed otherwise by the Railroad representative, the district prepares a letter of request for a Drilling License or Right of Entry (Permit) whenever the state proposes to do exploratory drilling with state forces on operating right of way. When work is contracted out, a No Fee Right of Entry must also be obtained by the Contractor per Railroad instruction.

The request will state the following:

- Approximate number and size of holes to be drilled.
- Anticipated length of time the property will be occupied.
- Grading requirements, if any.
- Any other significant factors relevant to state's proposed work.

The district submits the request with a print showing the location of the site tied into railroad stationing and indicating a minimum clearance of 15 feet (4.572m) measured at right angles to the centerline of the nearest track. The area of land to be used should be shaded and not outlined or colored.

Upon receipt, the district will accept the executed counterparts of the Permit on the state's behalf and return the duplicate counterpart to the railroad with any fee required. The district shall retain the original drilling permit and send a copy to the HQ R/W Office of Project Delivery for filing and a copy to the requesting branch.

After the drilling is completed, the district shall notify the railroad of the completion date and request termination of the license.

When the test findings are available, a copy of the findings shall be forwarded to the railroad for their information. All conditions of the license must be strictly adhered to during the performance of any work on railroad's property by state forces.

#### **8.69.21.00**      **Acquisition of Railroad Access Rights**

Procedures are outlined in the table below.

<b>ACQUISITION OF ACCESS RIGHTS EXAMPLES</b>		
<b>Case No.</b>	<b>Factual Condition</b>	<b>Explanation</b>
Case #1	Freeway to be constructed on new alignment; no public roadway previously existed; immediately adjacent to railroad operating or industrial property; no railroad property to be acquired.	The railroad has no legal right of access to the new facility and access rights need not be acquired from the railroad.
Case #2	Same factual condition as in Case #1, except that railroad property is to be acquired.	Access rights shall be acquired from the railroad using the applicable access clause in the conveyance documents. No payment should be made for the access rights.

<b>ACQUISITION OF ACCESS RIGHTS EXAMPLES (Continued)</b>		
<b>Case No.</b>	<b>Factual Condition</b>	<b>Explanation</b>
Case #3	Freeway to be constructed along an existing public roadway immediately adjacent to railroad operating property; no prior document or agreement between the State and railroad exists which establishes the railroad's right of access to the existing public roadway; no railroad property to be acquired.	Access rights need not be acquired.
Case #4	Same factual condition, but with a prior document or agreement.	<p>If a prior document or agreement does exist between the State and railroad that establishes the railroad's rights of ingress and egress to the existing public roadway, the district should request a legal opinion through HQ R/W to determine if loss of this right is compensable. The request should include the following:</p> <ul style="list-style-type: none"> <li>• R/W map.</li> <li>• Plan showing proposed construction.</li> <li>• Copy of prior document or agreement.</li> <li>• Evidence of railroad's use of public roadway for ingress and egress.</li> <li>• Any additional pertinent information.</li> </ul>
Case #5	Same factual condition as in Case #3, except that a new freeway is to be constructed immediately adjacent to railroad station ground, industrial, or nonoperating property.	Access rights should be acquired using the applicable access clause. Appraisal consideration should be given to payment of damages or other mitigating measures for the loss of access rights.
Case #6	Same factual conditions as in Case #3, except that a portion of railroad operating property is to be acquired.	Access rights should be acquired utilizing the applicable access clause in the conveyance documents. No consideration for access rights should be made.

Standard access clauses should be used when acquiring access rights from the railroads, but should be modified to specifically define courses and distances over which access is to be acquired. (See Section 8.69.18.00 et seq., for grade separation access rights.) The district should refer all railroad access control acquisitions to HQ R/W before completing the appraisal process and during negotiations should disagreements with the railroad occur.

#### **8.69.22.00 Replacement of Railroad Buildings**

#### **8.69.22.01 Determination of Use - Replacement**

In all acquisitions of improved railroad property covered by R/W Contract, the district must determine whether the affected building is operating or nonoperating. This is most important when it involves buildings such as depots, warehouses, or other railroad buildings, since the structure may have to remain in place and in service until a new facility is constructed. Only then can the old building be removed to accommodate highway construction.

If the district's preliminary investigation indicates that an affected building is operating property, the district prepares a comprehensive report substantiating its determination and submits to HQ R/W Office of Project Delivery. The report is sent to FHWA for approval to ensure that replacement of the structure will be eligible for federal reimbursement. To comply with Section 106 or 4(f) requirements, the report must indicate if there are any historic stations, tracks, or railroad sites that are being used for recreational purposes.

On all non-federally participating projects, operating improvements located on operating property will be relocated or be functionally replaced. Nonoperating property shall be acquired at fair market value.

If operating improvements are to be replaced, appropriate environmental clearance must be obtained.

#### **8.69.22.02**      **Buildings - Betterment and Credits**

When an existing railroad building is to be replaced, the replacement facility must be constructed to meet building code requirements. In constructing a replacement facility, only items that exceed the code requirements are considered betterments. The plans for the structure must be approved by the railroad and, as a general rule, only those items specifically requested by the railroad in excess of the code requirement and/or additional capacity are considered betterments. The credits to be applied against the construction of the new facility will be an amount equal to the railroad records of depreciated book value of the existing facility. See 23 CFR 646, as amended, for detailed instructions.

On federally participating projects, HQ R/W's procedure is that FHWA concur that the improvement to be replaced is an operating railroad facility. On all projects eligible for federal funds, the contract plans for the improvement, including credits, shall have prior FHWA approval.

#### **8.69.23.00**      **Railroad Rights of Entry**

##### **8.69.23.01**      **Types**

Railroads grant the following three types of Rights of Entry:

- **Rights of Entry Covering Permanent Right of Way Requirements** - These rights shall be covered by a formal document as soon as practicable. Since issuing a Right of Entry involves considerable time and expense to the railroad, a Right of Entry covering permanent right of way requirements should be requested only when it becomes necessary to meet advertising schedules, if it is apparent that waiting for an agreement or deed will delay the State's project. Every effort should be made to complete an acquisition before requesting a Right of Entry.
- **Rights of Entry Obtained for Temporary Easement** - The railroad will not grant a recordable document for a temporary right of way requirement, such as a temporary slope easement or temporary drainage easement. The district's request to the Railroad shall clearly set forth the reason for and use of the temporary easement.
- **Rights of Entry for Hazardous Waste Testing** - This basically is the same as the request for a temporary easement with specific detail on the reason for testing and any special conditions and circumstances.

Whether the document covers a temporary or a permanent right, the railroad refers to each type as a Right of Entry.

### **8.69.23.02**      **Standards of Acceptability**

Rights of Entry from the railroad are prepared by the railroad. The request to the railroad should specify that the signature page is to provide for acceptance by the DDC-R/W (see Exhibit 8-EX-24). Since they deviate from our standard form of Right of Entry, they must be submitted to HQ R/W for review and approval. Care should be taken that Rights of Entry from railroads incorporate the following two features:

- **Limited Liability by the State** - Liability should be limited in accordance with Government Code Section 14662.5, which provides that the State may agree to indemnify other parties for any damages proximately caused by reason of State's operations under the agreement, or by the use of language stating that the state will indemnify the railroad insofar as it may legally do so.  
  
A typical clause approved by the Legal Division reads as follows:  
  
"Pursuant to the provisions of Section 14662.5 of the Government Code of the State of California, the State of California agrees to indemnify and hold harmless Railroad and agrees to repair or pay for any damage proximately caused by reason of the permission given hereunder."
- **Limitation of Expenditures** - Limitation can be accomplished by putting a dollar limitation in the Right of Entry or by reference to a Construction and Maintenance Agreement or a Service Contract. If a dollar amount is included in the Right of Entry, the maximum should not exceed \$500.

### **8.69.23.03**      **Processing**

After review and recommendation for acceptance, the district shall execute the Right of Entry. If a dollar amount is included for possible work by railroad, it shall be encumbered prior to submittal. The Railroad Agent should notify Project Development to add this amount to State's estimate under "State Furnished Materials."

### **8.69.24.00**      **Summary of Railroad Transactions**

A MOS must be prepared for all railroad property transactions that are completed by deed, indenture, or Right of Entry for temporary right of way requirements when no other right of way document will be obtained from the railroad.

When a Right of Entry has been obtained for permanent rights that will be covered later by a deed or indenture, the MOS shall not be prepared until the permanent document has been obtained.

The MOS shall include conformed copies of all conveyances covered by the transaction. When permanent rights have been acquired, a conformed copy of the conveyance document(s) shall be sent to the HQ R/W Office of Project Delivery for filing. The district shall retain the originals.

The two types of MOS and their uses are described below.

### **8.69.24.01**      **Standard Memorandum of Settlement**

All railroad property transactions where payment is made for acquired right of way, whether permanent or temporary, must be prepared with the standard MOS conforming to the requirements of Section 8.50.00.00.

### **8.69.24.02**      **Short Form Railroad Memorandum of Settlement**

The short form Railroad MOS (Form RW 8-30) is used only when the appraised value of the transaction is zero and the right of way acquisition has been completed at no cost to the state, not withstanding processing fees.

## CHAPTER 8

### Acquisition Table of Contents

#### FORMS

<b><u>Form No.</u></b>	<b><u>Title</u></b>
RW 8-1	Hold for Future Use
RW 8-2	Hold for Future Use
RW 8-3	Right of Way Contract - State Highway
RW 8-4	Right of Way Contract—State Highway—Temporary Easement
RW 8-5	Contract Signature Sheet
RW 8-6	Application for Public Highway [Indian Lands]
RW 8-7	Affidavit of Completion [Indian Lands]
RW 8-8	Certificate [to Accompany Affidavit]
RW 8-9	Agreement for Purchase - Tax Deeded Property
RW 8-10	Grant of Right to Take Material
RW 8-11	Grant of Right to Dispose of Material
RW 8-12	Memorandum of Settlement
RW 8-13	Memorandum of Settlement (Short Form)
RW 8-14	Certification of Title
RW 8-15	Memorandum of Final Title
RW 8-16	Federal Participation Memorandum
RW 8-17	Acquisition Invoice

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**FEDERAL PARTICIPATION MEMORANDUM**  
 RW 8-16 (REV 05/2006)

**Federal Project #**  
**FEDERAL PARTICIPATION**  
 On the project ☐ YES ☐ NO  
 On the parcel ☐ YES ☐ NO

**TO:** 1) R/W Planning & Management

2) R/W Accounting Section

ADA Notice  
 For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Dist Co Rte KP/PM

Parcel EA

Grantor

**FROM:** R/W ACQUISITION

An agreement has been reached with the owner of the referenced parcel, which creates an encumbrance or obligation of capital funds. Following is a segregation of funds indicating whether they are eligible for Federal reimbursement or reportable to the IRS/FTB.

	FAE 6	Eligible	FAE 7	Ineligible	FAE 8	Suspense	RPI
<b>LAND:</b> Right of Way/Right of Entry	(6050)		(7050)		(8050)		B
Early Acquisition			(7083)		(8083)		B
Excess			(7080)		(8080)		B
Mitigation Site or Credits	(6081)		(7081)		(8081)		B
<b>TEMPORARY EASEMENT(S)</b>	(6050)		(7050)		(8050)		1
Early Acquisition			(7083)		(8083)		1
<b>IMPROVEMENTS:</b> Right of Way	(6050)		(7050)		(8050)		B
Early Acquisition			(7083)		(8083)		B
Excess			(7080)		(8080)		B
<b>PERSONALTY</b>	(6059)		(7059)		(8059)		B
<b>MACHINERY &amp; EQUIPMENT</b>	(6050)		(7050)		(8050)		B
<b>DAMAGES to Remainder(s)</b>							
Cost-to-Cure Damages (Reportable-see instructions)	(6050)		(7050)		(8050)		B
Other Damages (Reportable-see instructions)	(6050)		(7050)		(8050)		B
<b>DAMAGES to Excess Parcel(s)</b>							
Cost-to-Cure Damages	(6050)						N
Other Damages	(6050)						N
<b>GOODWILL</b>	(6050)		(7050)		(8050)		B
<b>INTEREST</b>	(6053)		(7053)		(8053)		A
<b>COURT COSTS</b>	(6130)		(7130)		(8130)		B
<b>RENT</b>	(6050)		(7050)		(8050)		1
<b>OTHER:</b>	(6050)		(7050)		(8050)		
<b>SUBTOTALS TO GRANTOR</b>	\$		\$		\$		
<b>TOTAL TO GRANTOR</b>	\$						
<b>TOTAL TO DAMAGES to Excess Parcel(s)</b>	\$						

I certify FWO/ION was issued to the grantor(s) for amount shown on \_\_\_\_\_ (date)

**INFORMATION MUST BE PROVIDED FOR ACCOUNTING TO PROCESS THIS TRANSACTION:**

**Current Balance**

A) CONDEMN DEPOSIT	<input type="checkbox"/> Yes <input type="checkbox"/> No	Total of Deposits: \$	( 090 )	\$
B) CONDEMN WITHDRAWAL	<input type="checkbox"/> Yes <input type="checkbox"/> No	CDF -	Amount	\$
C) Withheld Funds	<input type="checkbox"/> Yes <input type="checkbox"/> No		( )	\$
D) Excess Exchanged	<input type="checkbox"/> Yes <input type="checkbox"/> No	DD# of Parcel Given:	Mkt value	\$
E) Right of Entry	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date:	Prev. Enc.	\$
F) Settled by:	<input type="checkbox"/> R/W Contract <input type="checkbox"/> Court Order <input type="checkbox"/> Not yet settled		FFY:	

R/W ACQUISITION AGENT:

Sign: \_\_\_\_\_ Date: \_\_\_\_\_

Print: \_\_\_\_\_ Telephone: \_\_\_\_\_

SR. R/W ACQUISITION AGENT APPROVAL:

Sign: \_\_\_\_\_ Date: \_\_\_\_\_

Print: \_\_\_\_\_ Telephone: \_\_\_\_\_

Add a coding line for any amounts in the "DAMAGES to Excess Parcel(s)" section.

**RIGHT OF WAY PLANNING AND MANAGEMENT TO COMPLETE UNSHADED FIELDS**

TC	SRC DIST	UNIT	CHG DIST	EA	SUB JOB	SPECIAL DESIGNATION	FA	OBJ CODE	AMOUNT	FFY	RPI	REF DOCUMENT	SUF FIX
						1							
						1							
						1							

Vendor No.:

**PLANNING & MANAGEMENT APPROVAL:**

Sign: \_\_\_\_\_ Date: \_\_\_\_\_

Print: \_\_\_\_\_ Telephone: \_\_\_\_\_

**CERTIFICATION OF FUNDS**

I hereby certify that budgeted funds are available for the period and purpose of the expenditures shown.

ITEM: \_\_\_\_\_ CHAP: \_\_\_\_\_ STAT: \_\_\_\_\_ FFY: \_\_\_\_\_ \$: \_\_\_\_\_

Signature:

Date:

## INSTRUCTIONS

## INSTRUCTIONS FOR COMPLETING THE FEDERAL PARTICIPATION MEMORANDUM (RW 8-16)

The RW 8-16 form is completed for settlements or agreements such as Right of Way Contracts, condemnation settlements (executed with a Right of Way Contract) or court judgments (executed with court documents), temporary easements, rental payments, release of contract retention, etc. When properly completed, the form provides essential information to ensure that Federal reimbursement is maximized.

The form is forwarded to Planning and Management (P&M) for coding and funding review prior to sending to R/W Accounting for payment. The **original** is included as part of the Acquisition Claim Schedule Package for payment request. A **copy** is included in the official parcel file maintained in the Region/District.

**Right of Way Acquisition identifies R/W costs for Federal Aid eligibility and completes the following fields:**

- Federal project number, Federal participation on project and parcel  
**(Consult R/W Planning and Management for eligibility of Federal participation on both parcel and project or if parcel is being acquired under the Early Acquisition guidelines. Early Acquisition parcels are INELIGIBLE. Advance Acquisitions (e.g. Hardship and Protection parcels) are ELIGIBLE.)**
- District, County, Route
- Kilometer Post (KP)/Post Mile (PM), Parcel, Expenditure Authorization (EA)/Subjob  
(Formula for KP = 1.6093 X PM) (Formula PM = 0.6214 X KP)
- Grantor Name
- Apply appropriate charges to the FAE columns, subtotals and total.

**Eligible/ineligible** refers to Federal participation

**Reportable/non-reportable** refers to IRS tax reporting. Reportable does not mean taxable.

**LAND: Right of Way/Right of Entry** - Acquisition Cost - enter value of land in R/W as indicated in the appraisal.

**Early Acquisition** - enter value of land within R/W acquired under early acquisition process.

**Excess** - pro rata value of land in acquired Excess. (Excess land is not eligible for FHWA participation.

While damages to remaining land outside the right of way are eligible, the residual value of remainder property acquired as excess is not eligible.)

**Mitigation Site or Credits** - enter value of mitigation site or credits.

**TEMPORARY EASEMENT(S)** - value of the TCE - enter the amount paid to the grantor for use of land associated with (any) temporary easement. This amount is *reportable* to the IRS/FTB as rental income.

**Early Acquisition** - enter value of the TCE acquired under early acquisition process.

**IMPROVEMENTS: Right of Way** - enter value of improvements in R/W.

**Early Acquisition** - enter value of improvements within R/W acquired under early acquisition process.

**Excess** - enter value of improvements in the Excess. (Excess land is not eligible for FHWA participation.

While damages to remaining improvements outside the right of way are eligible, the residual value of remainder property acquired as excess is not eligible.)

**PERSONALTY** - insert the settlement amount of personal property acquired pursuant to manual section 8.06.05.

**MACHINERY & EQUIPMENT** - enter value of acquired items pertaining to realty.

**NOTE ON REPORTABILITY:** Reportable does not mean taxable. Cost-to-cure damages will be reportable if the amount is greater than \$600.00.

### **DAMAGES to Remainder(s):**

**Cost-to-Cure Damages** - in partial acquisitions, enter the amount of curative damages included in the acquisition price paid to the Grantor. These costs are normally eligible.

**Other Damages** - in partial acquisitions, enter the amount paid to the Grantor for permanent loss in value to the remainder. These damages are normally eligible.

## INSTRUCTIONS

## INSTRUCTIONS FOR COMPLETING THE FEDERAL PARTICIPATION MEMORANDUM (con't) (RW 8-16)

**Right of Way Acquisition identifies R/W costs for Federal Aid eligibility and completes the following fields: (con't)**

**DAMAGES to Excess Parcel(s):** These calculations are to capture federal participation only. They are not included in payment to Grantor.

**Cost-to-Cure Damages** - enter the amount of curative damages included in the partial acquisition appraisal, either primary or alternate, that is attributed to the excess parcel(s) acquired as either an uneconomic remnant or excess acquisition.

**Other Damages** - enter the amount of damages for permanent loss value to the excess parcel(s) included in the partial acquisition appraisal, either primary or alternate, that is attributed to the excess parcel(s) acquired as either an uneconomic remnant or excess acquisition.

**GOODWILL** - eligible for federal participation.

**INTEREST** - eligible for Federal participation.

**COURT COSTS** - eligible for Federal participation.

**RENT** - rental amounts required to hold property vacant until acquisition is completed. Eligible for participation.

**OTHER** - are expenses paid to the Grantor such as Notary Fees.

**NOTE ON INVERSE CONDEMNATION:** Payment for inverse actions are generally ineligible unless individually approved for reimbursement by FHWA.

- **SUBTOTALS TO GRANTOR** - enter amounts for each column. Do not include amounts from the "DAMAGES to Excess Parcel(s)" section.
- **TOTAL TO GRANTOR** - total amounts in FAE 6, 7 & 8 columns and enter. Do not include amounts from the "Damages to Excess Parcel(s)" section.
- **TOTAL TO DAMAGES to Excess Parcel(s)** - total amounts for the two boxes in the "DAMAGES to Excess Parcel(s)" section.
- Complete all Yes and No boxes in Rows A through E and mark appropriate box in Row F. Complete corresponding boxes to the right.
- **\*I certify FWO/ION was issued to the grantor(s) for amount shown on \_\_\_\_\_.**  
To be filled out only when the Region/District chooses to encumber funds at the time of the First Written Offer (Initiation of Negotiation). Insert the date the First Written Offer was issued to the grantor(s).
- Acquisition Agent will sign, date, print name and enter telephone number.
- Acquisition Senior will sign, date, print name and enter telephone number.

**Right of Way - Planning & Management completes the following fields:**

- Unshaded area of coding box.
- Add a coding line for any amounts in the "DAMAGES to Excess Parcel(s)" section.
- \*Codes the reference document prefix "FW" with the parcel number (i.e. FW parcel#) when encumbering funds at the time of the First Written Offer (Initiation of Negotiation).
- Planning and Management will sign the form indicating that the EA and FFY are set up in either EAS/COMS or TRAMS and that funding is available. Also date, print name and telephone number.

**Division of Accounting - R/W Accounting completes the following fields:**

- Shaded areas of coding box.
- Accounting will sign and date in Certification of Funds box indicating that the R/W Accounting Liaison has confirmed through EAS/COMS or TRAMS that the EA is masterfiled and that funding is available.

\*Region/Districts have the ability to encumber funds at the time of the First Written Offer, subject to the procedures and criteria outlined in the Department's memorandum, entitled "Encumbering Right of Way Capital Funds at the First Written Offer a.k.a. Initiation of Negotiation, dated November 29, 2005 issued by the Office of Planning and Management.



## CHAPTER 8

### Acquisition Table of Contents

#### EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
8-EX-1	Housing and Community Development Guidelines
8-EX-2	Title III–Uniform Real Property Acquisition Policy (Sections 301 and 302)
8-EX-3	Rental Escrow Instructions
8-EX-4	Rental Agreement
8-EX-5	Request for Confirmation of Market Value
8-EX-6	Hold for Future Use
8-EX-7	Claim for Payment of Expenses Actually Incurred
8-EX-8	Pre-escrow Rent Schedule Instructions
8-EX-9	Withdrawal Letter - Owner in Occupancy
8-EX-10	Withdrawal Letter - Eligible Tenant in Occupancy
8-EX-11	Withdrawal Letter - Tenant No Longer in Occupancy
8-EX-12	Acquisition Management Review Checklist
8-EX-13	Permit to Enter for Underground Tank Testing for Hazardous Waste
8-EX-14	Permit to Enter for Other Testing for Hazardous Waste
8-EX-15A	Appraisal Summary Statement
8-EX-15B	Appraisal Summary Statement-Loss of Goodwill
8-EX-15C	Valuation Summary Statement
8-EX-16	Summary Statement Relating to the Purchase of Real Property or an Interest Therein
8-EX-17	Hold for Future Use
8-EX-18A	Full Acquisition Offset Statement
8-EX-18B	Partial Acquisition Offset Statement
8-EX-19	Amendment to Right of Way Contract
8-EX-20	Assignment of Lease-To State
8-EX-21	Request for Information - Form UCC3 (Financing Statement)
8-EX-22	Form UCC2
8-EX-23	Right of Entry - Long Form
8-EX-24	Right of Entry - Short Form
8-EX-25	Agreement for Possession and Use
8-EX-26	Construction Permit
8-EX-27	Permit to Enter and Construct
8-EX-28	All-Purpose Acknowledgement
8-EX-29	Hold for Future Use
8-EX-30	Goodwill Information Sheet
8-EX-31	Interagency Agreement
8-EX-32	Transfer of Control and Possession
8-EX-33	Approved as to Form
8-EX-34	Summary of Estimates or Actual Costs-Functional Replacement

**Exhibit No.****Title**

8-EX-35	Memorandum of Agreement for Possession and Use
8-EX-36	Escrow Instructions - Sample
8-EX-37	Parcel Progress Record
8-EX-38	Warrant to Escrow Agent
8-EX-39	Warrant to District
8-EX-40	Hold for Future Use
8-EX-41	Certificate of Acceptance
8-EX-42	Notice of Removal of Property from Taxrolls
8-EX-43	Tax Cancellation Letter - Page 2 Total Take City
8-EX-44	Tax Cancellation Letter - Page 2 Total Take County
8-EX-45	Tax Cancellation Letter - Page 2 Partial Take City
8-EX-46	Tax Cancellation Letter - Page 2 Partial Take County
8-EX-47	Tax Cancellation Condemnation Letters - Order for Possession
8-EX-48	Change in Ownership of Real Property Acquired to Replace Property taken by Governmental Action or Eminent Domain Proceedings
8-EX-49	Information Sheet for Owner(s) Regarding Property Tax Relief
8-EX-50	Administrative Settlement/Statutory Offer
8-EX-51	Public School District Lands
8-EX-52	Request for Declaratory Relief Action
8-EX-53	Highway Easement Deed - Perfection of Title (USFS Only)
8-EX-54	Highway Easement Deed - New Construction